

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1974  
VOLUME 4

Revised Civil Statutes (Articles 2461 to 5561)



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# West's Texas Statutes and Codes

Volume 4 **SUPERSEDED**

**REVISED CIVIL STATUTES**

Articles 2461 to 5561

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WEST PUBLISHING CO.

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# PREFACE

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These volumes of West's Texas Statutes and Codes include, in compact and convenient form, the text of all the general and permanent laws of the State of Texas enacted through the Regular Session and First Called Session of the 63rd Legislature, and the Texas Constitution, as amended through November 6, 1973.

The laws in West's Texas Statutes and Codes are under the same classification as Vernon's Annotated Texas Statutes and Vernon's Texas Codes Annotated. Therefore, the user of this edition may go from any article or section herein to the same article or section in the annotated editions, where the complete constructions of the laws by the state and federal courts, historical data relative to the origin and development of the law, and other helpful research aids, are conveniently available.

## Scope of Volumes

Volume 1 contains the Constitution of the State of Texas; the Business and Commerce Code; the Education Code; the Family Code; the Penal Code; Penal Auxiliary Laws (Liquor Control Act; Game, Fish and Oysters); the Code of Criminal Procedure; and the Water Code. The Business and Commerce, Education, Family, Penal and Water Codes are units of the Texas Legislative Council's on-going statutory revision program, authorized by Civil Statutes, Art. 5429b-1.

Volume 2 contains the Business Corporation Act; Title 32, Corporations, of the Civil Statutes; the Election Code; the Insurance Code; Title 78, Insurance, of the Civil Statutes; the Probate Code; and Title 122, Taxation, and Title 122A, Taxation-General, of the Civil Statutes.

Volumes 3 to 5 contain the balance of the text of the Civil Statutes.

## Tables

Disposition Tables are provided following each Code and throughout the Civil Statutes, providing a means of tracing repealed subject matter to parallel provisions.

Special laws pertaining to education and water, which were neither repealed by, nor incorporated into, the Education and Water Codes, are tabulated following the respective Codes.

Additionally, Disposition Table 2 of the Penal Code shows the new official citations or classifications of unrepealed articles of the Texas Penal Code of 1925.

## **PREFACE**

### **Indexes**

A separate detailed descriptive word Index follows the Constitution, each Code and the Penal Auxiliary Laws to facilitate the search for specific provisions found therein. Laws in the Civil Statutes may be located by means of the Topical Index at the end of Volume 5.

**THE PUBLISHER**

November, 1974

# TABLE OF CONTENTS

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	Page
Preface .....	III
Cite This Book .....	VII

## REVISED CIVIL STATUTES

Title	
46. Credit Organizations .....	1
46A. Declaratory Judgments .....	23
47. Depositories .....	25
48. Descent and Distribution—See Probate Code	
49. Education—Public—See Education Code	
50. Elections—See Election Code	
51. Eleemosynary Institutions .....	44
52. Eminent Domain .....	83
52A. Engineers .....	88
53. Escheat .....	96
54. Estates of Decedents—See Probate Code	
55. Evidence .....	107
56. Execution .....	119
57. Exemptions .....	122
58. Express Companies .....	126
59. Feeble Minded Persons—Proceedings in Case of .....	128
60. Feeding Stuff .....	136
61. Fees of Office .....	144
62. Fences .....	235
63. Fire Escapes .....	237
63A. Fire Protection Districts .....	244
64. Forcible Entry and Detainer .....	245
65. Frauds and Fraudulent Conveyances—See Business and Commerce Code	
66. Free Passes, Franks and Transportation .....	247
67. Fish, Oyster, Shell, etc. ....	253
68. Garnishment .....	285
68A. Good Neighbor Commission of Texas .....	287
69. Guardian and Ward—See Probate Code	
70. Heads of Departments .....	289
71. Health—Public .....	379
72. Holidays—Legal .....	740
73. Hotels and Boarding Houses .....	741
74. Humane Society—Repealed .....	742
75. Husband and Wife—See Family Code	
76. Injunctions .....	746
77. Injuries Resulting in Death .....	750
78. Insurance .....	752
79. Interest—Consumer Credit—Consumer Protection .....	753

## TABLE OF CONTENTS

Title	Page
80. Intoxicating Liquor—Repealed .....	804
81. Jails .....	805
82. Juveniles .....	809
83. Labor .....	869
84. Landlord and Tenant .....	978
85. Lands—Acquisition for Public Use .....	984
86. Land—Public .....	993
87. Legislature .....	1111
88. Libel .....	1126
89. Library and Historical Commission .....	1128
90. Liens .....	1143
91. Limitations .....	1163
92. Mental Health .....	1171

*Topical Index to Revised Civil Statutes, see Volume 5*

# CITE THIS BOOK

Thus: West's Texas Civil Statutes, Art. —

†





# TITLE 46

## CREDIT ORGANIZATIONS

### 1. CREDIT UNIONS

#### Article

- 2461. Repealed.
- 2461-1. Definition and Purpose.
- 2461-2. Organization.
- 2461-3. Amendments.
- 2461-4. Restrictions.
- 2461-5. Corporate Powers.
- 2461-6. Membership.
- 2461-7. Expulsion from Membership.
- 2461-8. Fiscal Year.
- 2461-9. Meetings.
- 2461-10. Official Family.
- 2461-11. Officers.
- 2461-12. Board of Directors.
- 2461-13. Penalties for Official Misconduct.
- 2461-14. Credit Committee.
- 2461-15. Loans to Members.
- 2461-16. Audit Committee.
- 2461-17. Compensation.
- 2461-18. Shares.
- 2461-19. Thrift Clubs.
- 2461-20. Deposits.
- 2461-21. Joint Accounts.
- 2461-22. Minors.
- 2461-23. Trust Accounts.
- 2461-24. Investments.
- 2461-25. Reserve Allocations.
- 2461-26. Dividends.
- 2461-27. Share Reduction.
- 2461-28. Merger.
- 2461-29. Reports.
- 2461-30. Supervision Fees.
- 2461-31. Records.
- 2461-32. Examinations.
- 2461-33. False Reports.
- 2461-34. Conversion.
- 2461-35. Officers, Directors and Employees—Cease and Desist—Removal—Appeal.
- 2461-35A. Suspension.
- 2461-36. Liquidation.
- 2461-37. Subsidiary Offices.
- 2461-38. Credit Union Commission.
- 2461-39. Qualification of Members.
- 2461-40. Residence of Members.
- 2461-41. Appointment; Term.
- 2461-42. Vacancies.
- 2461-43. Confirmation of Appointments.
- 2461-44. Expenses and Compensation of Members.
- 2461-45. Disqualification of Members.
- 2461-46. Meetings.
- 2461-47. Election; Compensation; Powers and Duties.
- 2461-48. Transfers to General Revenue Fund.
- 2461-49. Special Assessment.
- 2462 to 2484d. Repealed.

### 2. AGRICULTURAL AND LIVESTOCK POOLS

- 2485. May Incorporate.
- 2485a. May Incorporate.
- 2486. Definitions.
- 2486a. Definitions.
- 2487. May Borrow.
- 2488. May Loan.
- 2489. Loans and Interest.
- 2489a. Loans and Interest.
- 2490. Agents for Borrowers.
- 2490a. Agents for Borrowers.
- 2491. Warehouses and Concentration Places.

#### Article

- 2492. Margins.
- 2493. Loan Limit and Liquidations.
- 2494. Bond.
- 2495. Officers to Furnish Bonds.
- 2495a. Officers to Furnish Bonds.
- 2496. To File Statement.
- 2496a. To File Statement.
- 2497. Pools May Use Security.
- 2497a. Pools May Use Security.
- 2498. Term of Loan.
- 2498a. Term of Loan.
- 2499. Unlawful to Dispose of Receipt.
- 2499a. Unlawfully Disposing of Receipt.
- 2499b. Penalty.

### 3. MUTUAL LOAN CORPORATIONS

- 2500. Purpose.
- 2501. Powers.
- 2502. Capital Stock.
- 2503. Ratio of Capital to Loans.
- 2504. Articles of Incorporation.
- 2505. Semi-annual Report.
- 2506. Liability of Stockholders.
- 2507. Rate of Interest.
- 2507a. Amendatory Act Applicable to Existing Corporations.

### 4. CO-OPERATIVE CREDIT ASSOCIATIONS

- 2508. Purposes.
- 2509. Powers.
- 2510. Capital Stock.
- 2511. Articles of Incorporation.
- 2512. Fees and Reports.
- 2513. Retirement of Stock.

### 5. FARMERS' CO-OPERATIVE SOCIETY

- 2514. May Incorporate.
- 2515. Purely Local.
- 2516. Laws Governing.
- 2517. Filing and Recording Charter.
- 2518. Statement to be Made.
- 2519. Assets.
- 2520. Authority.
- 2521. Membership.
- 2522. Withdrawal.
- 2523. Liability of Members.
- 2524. Publications.

### 1. CREDIT UNIONS

*The Credit Union Act, set out in this title as Articles 2461-1 to 2461-49, was enacted by Acts 1969, 61st Leg., p. 540, ch. 186, §§ 1-49. Former articles 2461 to 2484d, dealing with Rural Credit Unions, were repealed by section 50 of the act of 1969. See Table following for disposition of repealed articles.*

### DISPOSITION TABLE

Showing where subject matter of former articles 2461 to 2484d of Title 46 is now covered by article 2461-1 et seq., as enacted by Acts 1969, 61st Leg., p. 540, ch. 186.

Former Articles	New Articles
2461 -----	2461-1
2462 -----	2461-15
	2461-24
2463 -----	2461-2
2464 -----	2461-2
	2461-4
2465 -----	2461-30
	to
	2461-32
2466 -----	2461-2
2467 -----	2461-2
2468 -----	2461-9
2469 -----	2461-10
	to
	2461-12
2470 -----	2461-12
2471 -----	2461-14
2472 -----	2461-35
2473 -----	2461-18
	2461-20
2474 -----	2461-23
2475 -----	2461-5
2476 -----	2461-15
2477 -----	2461-15
2478 -----	2461-7
2479 -----	2461-7
2480 -----	2461-16
2481 -----	-----
2482 -----	2461-26
2483 -----	2461-34
	2461-36
2484 -----	2461-29
2484a -----	-----
2484b -----	2461-38
	to
	2461-47
2484c -----	2461-33
2484d -----	2461-21

Art. 2461. Repealed by Acts 1969, 61st Leg., p. 540, ch. 186, § 50, eff. May 13, 1969

**Art. 2461-1. Definition and Purpose**

A credit union is a cooperative, nonprofit association, incorporated in accordance with the provisions of this Act for the purpose of encouraging thrift among its members and of creating a source of credit at fair and reasonable rates of interest. A credit union provides an opportunity for its members to use and control their own money and provides all members of the group within which it is organized equal opportunities irrespective of race, color, or creed to improve their economic and social condition.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

**Art. 2461-2. Organization**

(a) Any seven or more persons, of legal age, a majority of whom shall be residents of the State of Texas, who have a common bond re-

ferred to in Section 6, may organize a credit union and become charter members thereof by:

(1) executing in duplicate, articles of incorporation by the terms of which they agree to be bound, which articles shall state:

(A) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union;

(B) the town or city wherein the proposed credit union is to have its principal place of business;

(C) the term of existence of the credit union, which shall be perpetual;

(D) the par value of the shares of the credit union, which shall be \$5;

(E) the names and addresses of the incorporators, and the number of shares subscribed by each;

(F) the number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as Directors until the first annual meeting or until their duly elected successors are elected and qualify; and

(G) that the credit union shall have the power to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated;

(2) preparing and adopting bylaws for the general government of the credit union, consistent with the provisions of this Act, and executing the same in duplicate; and

(3) forwarding the required charter fee of \$50, together with duplicate originals of the application, articles of incorporation, bylaws, and biographical data on each Director constituting the initial Board of Directors signed by each such Director, to the Credit Union Commissioner. The Credit Union Commissioner shall have the authority to investigate the application, the articles of incorporation, the bylaws, and the biographical data on each director named in the articles of incorporation to determine whether the proposed credit union and its initial board of directors meet the requirements of this Act. If the proposed credit union and its initial board of directors meet the requirements of this Act, he shall issue a certificate of approval and return a copy of the bylaws and the articles of incorporation to the applicant which shall be preserved in the permanent files of the credit union. If the proposed credit union and its initial board of directors do not meet the requirements of this Act, the Credit Union Commissioner shall deny the application in writing.

(b) The minimum paid-in capital with which the credit union commences business shall not be less than \$1,000, with a minimum membership of not less than 100 persons; provided, the Credit Union Commissioner shall have the authority to require a greater minimum paid-in capital and a greater minimum membership. The credit union shall not commence business until formal approval of the charter has been received, and until it shall have received the minimum paid-in capital and shall have the minimum required membership. The Credit Union Commissioner shall prepare forms, consistent with this Act, which shall be used by credit union incorporators.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1214, ch. 440, § 1, eff. June 14, 1973.]

The 1973 Act, which by §§ 1 to 14 amended various articles of the Credit Union Act, provided in §§ 15 to 17:

"Sec. 15. The Credit Union Commissioner, with the advice and approval of the Credit Union Commission, shall promulgate rules and regulations by June 1, 1975, requiring that all credit unions doing business in Texas shall provide deposit insurance for their members and depositors.

"Sec. 16. All laws or parts of laws which are in conflict with this Act are hereby repealed to the extent of such conflict only.

"Sec. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable."

#### Art. 2461-3. Amendments

The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted in writing to the Credit Union Commissioner. Amendments shall become effective upon approval in writing by the Credit Union Commissioner.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-4. Restrictions

Any person, corporation, copartnership, or association, except a credit union or association of credit unions organized under the provisions of this Act or the Federal Credit Union Act, using a name or title containing the words "credit union" or any derivation thereof, or representing themselves in their advertising, or otherwise conducting business as a credit union shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned not more than two years, or both, and may be permanently enjoined from using such words in its name.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-5. Corporate Powers

A credit union shall have power to:

- (1) make contracts;
- (2) sue and be sued in the name of the credit union;
- (3) adopt and use a common seal and alter same at pleasure;
- (4) purchase, hold, and dispose of property necessary or incidental to its operations;

(5) require the payment of an entrance or membership fee not to exceed \$1 of any applicant admitted to membership;

(6) receive from its members payments on shares of deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership;

(7) lend its funds to its members as hereinafter provided;

(8) purchase or otherwise provide insurance for the benefit or convenience of its members;

(9) borrow from any source not to exceed an aggregate amount equal to 25 percent of its shares, deposits, and surplus, unless such loan in excess of such amount be first approved by the Credit Union Commissioner. Approval or disapproval for such borrowing shall be given in writing by the Credit Union Commissioner within 10 days after request by any such credit union;

(10) invest funds as provided in this Act;

(11) make deposits in legally chartered banks, trust companies, central-type credit union organizations, and purchase shares and/or invest in savings and loan associations;

(12) hold membership in other credit unions organized under this Act or other acts upon approval from the Credit Union Commissioner, and hold membership in such other organizations as may be approved by the board of directors;

(13) declare dividends, pay interest on deposits, and pay interest refunds to borrowers as hereinafter provided;

(14) impress a lien upon the shares and accumulation of dividends and interest of any member to the extent of any loans made to him directly or indirectly, or on which he is surety, and for any dues or charges payable by him;

(15) change its place of business within the state upon written notice to the Credit Union Department;

(16) collect, receive, and disburse moneys in connection with the sale of travelers checks, money orders, and other money-type instruments, and for such other purposes as may provide benefit or convenience for its members;

(17) exercise the powers granted corporations organized under the laws of the State of Texas and such additional incidental powers as may be necessary or requisite to enable it to promote and carry on effectively its purposes; and

(18) with the approval of the Credit Union Commissioner, operate as a central credit union, the membership of which shall be defined in its bylaws, in the way and manner as is prescribed in its bylaws;

and undertake activities which are consistent with the business of the central credit union.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1215, ch. 440, § 2, eff. June 14, 1973.]

#### Art. 2461-6. Membership

(a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons having the common bond set forth in the bylaws as have been duly admitted members, have paid the entrance fee, if any, as provided in the bylaws, have subscribed and paid for one or more shares, and have complied with such other requirements as the articles of incorporation or bylaws may specify.

(b) Credit union organizations shall be limited to groups having a definable community of interest, including but not limited to occupation, association, residence, religion, or the like, and members of the immediate family of such persons. "Members of the immediate family" include parents of a member, if residents of the same household, the spouse, surviving spouse, and children.

(c) Societies and associations composed of individuals who are eligible for membership may be admitted to membership in the same manner and under the same conditions as individuals.

(d) An individual who leaves the field of membership may be permitted to retain his membership in the credit union at the discretion of the board of directors.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-7. Expulsion from Membership

A member of the credit union may be expelled by the board of directors, but only after an opportunity has been given him to be heard for the purpose of such expulsion. A written notice of this hearing setting forth the time, place, and date for such meeting shall be forwarded to the member by the board of directors, together with the charges which serve as the basis for the expulsion. The member may be expelled for failure to meet the conditions of his membership, failure to carry out his obligations to the credit union, conviction of a felony, neglect or refusal to comply with the provisions of the laws under which the credit union operates and the bylaws of the credit union, habitual neglect to pay obligations, insolvency, or bankruptcy. Upon completion of the hearing, and if the board of directors has voted to expel the member, the member shall remain liable for any sums owed to the credit union for loans or other purposes.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1216, ch. 440, § 3, eff. June 14, 1973.]

#### Art. 2461-8. Fiscal Year

The fiscal year of all credit unions organized under this Act shall end on the last day of December.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-9. Meetings

The annual meeting and special meetings shall be held at the time, place, and in the manner indicated in the bylaws. At all such meetings the member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a society or association having membership in the corporation may be represented and vote by one of its members or shareholders, providing such person has been duly authorized by the governing board of said society or association to represent it.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-10. Official Family

(a) The business affairs of the credit union shall be directed by a board of directors of not less than five directors to be elected at an annual members' meeting by and from the members, and by an audit committee of not less than three members to be appointed by the board of directors, and by a credit committee of not less than three members to be appointed by the board of directors.

(b) All members of the board of directors and of such committees shall hold office for such terms respectively, as the bylaws may provide. No member of the board of directors or credit committee shall be a member of the audit committee.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1216, ch. 440, § 4, eff. June 14, 1973.]

#### Art. 2461-11. Officers

(a) Within 30 days following the organizational meeting and each annual meeting, the directors shall elect from their own number a chief executive officer who may be designated as chairman of the board or president, a vice-chairman or vice-presidents, a treasurer, and a secretary, of whom the last two may be the same individual. The board of directors may employ an officer in charge of operations whose title shall be either president or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to be in active charge of the affairs of the credit union.

(b) Within 10 days after election to any position, each person so elected or appointed shall execute an oath of office by which he agrees to accept and to diligently and faithfully carry out the duties and responsibilities of the position to which he has been elected and not to negligently or willfully violate, or permit to be violated, any provision of this Act or the bylaws of such credit union.

(c) The chairman of the board and secretary shall execute a certificate of election which shall set forth the names and addresses of the officers, directors, and committee members elected or appointed.

(d) The oath of office and the certificate of election shall be executed on forms prepared by the Credit Union Department, and one copy of each shall be filed with the department

within 10 days after such election or appointment.

(e) The terms of the chairman of the board, vice-chairman, treasurer, and secretary shall be for one year, or until their successors are chosen and have been duly qualified.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-12. Board of Directors

(a) The board of directors shall have the general direction of the affairs, funds, and records of the credit union and shall meet as often as necessary, but not less than once each month.

(b) It shall be the special duty of the directors to:

(1) act upon applications for membership; appoint a membership officer from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, who may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require; said membership officer shall not have the authority to disapprove any application for membership;

(2) purchase a blanket fidelity bond, as prescribed by the Credit Union Department for all credit unions according to their asset categories, covering the officers, employees, members of official committees, attorneys-at-law, and other agents, with protection against loss caused by dishonesty, burglary, robbery, larceny, theft, hold-up, forgery or alteration of instruments, misplacement or mysterious disappearance, and for faithful performance of duty. The Credit Union Department shall prescribe in its rules and regulations the amount of minimum bond coverage required for all credit unions according to their asset categories;

(3) determine from time to time the rate(s) of interest consistent with the provisions of this Act which shall be charged on loans and determine the rate(s) of interest refund, if any, to be paid to borrowing members (from the credit balance of the undistributed earnings account), the qualifications for participation, and the manner of computation and payment;

(4) declare dividends in the way and manner as provided by the bylaws;

(5) determine the rate(s) of interest to be paid on deposits;

(6) limit the number of shares which may be owned by a member;

(7) fill vacancies occurring between annual meetings on the board of directors, credit committee, and audit committee until the election or appointment and qualification of their successors;

(8) fix from time to time the maximum amount, both secured and unsecured, which may be loaned to any one member;

(9) authorize the investment of funds of the credit union;

(10) authorize the employment and compensation of such person or persons as may be necessary to carry on the business of the credit union;

(11) authorize the conveyance of property;

(12) authorize the borrowing or lending of money to carry on the functions of the credit union;

(13) designate a depository or depositories for the funds of the credit union;

(14) upon two-thirds approval, the board of directors may replace any or all members of the credit committee and may suspend any or all members of the audit committee for failure to perform their duties until the next members' meeting, which members' meeting shall not be less than 10 days nor more than 30 days after such suspension and at which meeting such suspensions shall be acted upon by the members;

(15) authorize and provide for compensation of auditing assistance requested by the audit committee;

(16) suspend from his official position any officer or director who fails to attend regular meetings for three consecutive meetings without cause, or who otherwise fails to perform any of the duties required of him as an official;

(17) appoint from its own number an executive committee to exercise such authority as may be delegated to it by the board of directors between meetings of the board of directors;

(18) perform or authorize any action consistent with this Act not specifically reserved by the bylaws or this Act for the members, and perform such other duties as the members may from time to time require; and

(19) appoint any committees deemed necessary.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-13. Penalties for Official Misconduct

(a) Any officer, director, committee member, loan officer, or employee of a credit union who knowingly permits a loan to be made, or participates in a loan to a nonmember is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned for not more than six months, or both. Additionally,

he shall be primarily liable to the credit union for the amount thus illegally loaned, and the illegality of such a loan shall be no defense in any action of the credit union to recover on the loan. Extension of credit for the sale of real or personal property owned by the credit union or the sale of assets acquired in liquidation or repossession shall not be construed as a violation of this paragraph.

(b) Any person who knowingly makes a false entry upon the books or records or in any report or statement of such credit union, or exhibits a false or fictitious paper, instrument, or security, or knowingly gives a false answer to any question propounded to him by the Credit Union Commissioner, Deputy Credit Union Commissioner, or any authorized Examiner shall be guilty of a felony, and upon conviction shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both.

(c) Any officer, director, committee member, or employee who receives payments on shares knowing the credit union is insolvent shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned for not more than two years, or both.

(d) Any officer, director, committee member, loan officer, or employee of a credit union who embezzles, fraudulently abstracts, or willfully misapplies money, funds, credit, or any other asset of a credit union, or knowingly aids another to do so, shall be guilty of a felony, and upon conviction shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both.

(e) Any person who, for the purpose of concealing any fact or information from the Credit Union Commissioner, Deputy Credit Union Commissioner, or any authorized Examiner, or for the purpose of suppressing any evidence material to any pending or anticipated lawsuit or legal proceeding, abstracts, removes, destroys, or conceals any book or record of such credit union shall be guilty of a felony, and upon conviction shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both.

(f) Any person who demands, or directly or indirectly receives a bonus, commission or other consideration on account of the making of a loan or investment or the purchase of any asset by a credit union shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned for not more than two years, or both.

(g) Any officer, director, committee member, loan officer, or employee of a credit union who knowingly permits a loan to be made, or any person who knowingly participates in a loan in violation of this Act, the bylaws, or rules and regulations of the Credit Union Commissioner, shall be guilty of a felony and upon conviction shall be fined not more than \$5,000 or imprisoned for not more than 10 years, or both.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1216, ch. 440, § 5, eff. June 14, 1973.]

#### Art. 2461-14. Credit Committee

(a) It shall be the duty of the credit committee to review all applications for loans to ascertain whether or not such loan would be for a provident and productive purpose and would benefit the applicant, and to determine whether or not the security offered, in its judgment, is sufficient and the terms of the application proper.

(b) The credit committee shall meet as often as may be required, but not less than once a month.

(c) The credit committee may appoint one or more loan officers to act under the supervision of the credit committee, and such loan officers, when so appointed, may make loans without necessity for a meeting of or approval by any members of the credit committee, as provided in the bylaws.

(d) Each loan officer shall, within seven days of the filing of each loan application received by him from a member or by referral from another officer, furnish to the credit committee a record of such application and his disposition of it.

(e) All applications for loans not approved by a loan officer shall be considered and acted upon by the credit committee no later than 30 days from the date such application is forwarded to the credit committee.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-15. Loans to Members

(a) Except as provided herein, a credit union may make loans to members upon such security as the bylaws may provide and the credit committee shall approve, all in accordance with such Rules and Regulations as may be promulgated by the Credit Union Commissioner.

(b) A credit union shall not grant an unsecured loan with a maturity exceeding 5 years; nor shall it grant secured loans with maturities exceeding 10 years; provided, however, these limitations shall not apply to loans guaranteed in whole or in part by the United States Government or any agency of the State of Texas or loans secured by a lien on real property as authorized hereinafter.

(c) The Credit Union Commissioner shall promulgate regulations relating to terms and collateral requirements for secured and unsecured loans.

(d) Loans to any one member shall not exceed 10 percent of the unimpaired capital and surplus.

(e) No loan shall bear an interest rate in excess of one percent per month on the unpaid monthly balance.

(f) No credit union shall charge the borrower anything of value in connection or in association with a loan other than repayment of the unpaid principal balance and interest; provided, that the credit union may require the borrower to pay fees and charges prescribed by

law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction, fees or premiums in connection with real estate loans, including fees or premiums for title examination, title insurance or similar purposes, fees for preparation of deeds, settlement statements or other documents, escrows for future payments of taxes and insurance, fees for notarizing deeds and other instruments, appraisal fees, or credit reports.

(g) Every loan shall be evidenced by a written instrument.

(h) Loans may be made to members of the board of directors, credit committee, and audit committee under the same general terms and conditions as to other members of the credit union. Any loans made to or cosigned by members of the board of directors, credit committee, or audit committee, shall require the  $\frac{2}{3}$  approval of all members of the board of directors and credit committee where such loan exceeds the unencumbered share balance of the borrowing member.

(i) Loans to members secured by mortgages on real property shall be made pursuant to Rules and Regulations promulgated by the Credit Union Commissioner; provided the total outstanding balance of all loans secured by mortgages on real estate shall not exceed 25 percent of the outstanding shares and deposits of the credit union.

(j) Any loan may be paid or prepaid in whole or in part, without penalty, on any day in which the credit union is open for business.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1217, ch. 440, § 6, eff. June 14, 1973].

#### Art. 2461-16. Audit Committee

(a) The audit committee shall make, or cause to be made, at least semiannually, an examination of the affairs of the credit union; shall make, or cause to be made, a report of its semiannual examination to the board of directors; and shall make, or cause to be made, an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union.

(b) The audit committee shall cause the passbooks and accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than once each year. The term "passbook" shall include any book, statement of accounts, or other pertinent or related record.

(c) The audit committee may suspend by a unanimous vote any officer of the credit union or any member of the board of directors, until the next members' meeting, which members' meeting shall not be less than 10 days nor more than 30 days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the members

to consider any violation of this Act, the charter, or the bylaws, or any practice of the credit union deemed by the audit committee to be unsafe or unauthorized.

(d) Any member of the audit committee may be suspended by the board of directors. The members shall decide, at a meeting held not less than 10 nor more than 30 days after such suspension, whether the suspended committee member shall be removed from or restored to the audit committee.

(e) If the Credit Union Commissioner finds that the audit committee is not performing its responsibilities, he shall be authorized to require an outside audit acceptable to him. All expenses of such audit shall be borne by the credit union.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1218, ch. 440, § 7, eff. June 14, 1973].

#### Art. 2461-17. Compensation

No officer of the corporation, director, or committee member, other than the officer in active charge of the affairs of the credit union, may be compensated, directly or indirectly, for his services as such. This shall not be construed to prevent reimbursement of directors and committee members for actual expenses they may incur in carrying out the duties of their office.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-18. Shares

(a) A share is defined as a term applied to each \$5 standing to the share account of a member. The shares of stock of a credit union shall all be common shares of one class and shall have a par value of \$5 per share. No certificate shall be issued to denote ownership of a share in a credit union. Shares may be subscribed, paid for, and transferred in such manner as the bylaws may prescribe.

(b) The credit union shall have and may exercise a lien on the shares or deposits of any member for any sum due the credit union from said member or for any loan endorsed by him.

(c) The credit union may require 60 days' notice for withdrawal of shares by a member.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1218, ch. 440, § 8, eff. June 14, 1973.]

#### Art. 2461-19. Thrift Clubs

Christmas clubs, vacation clubs, and other thrift clubs, if provided for the use of members, shall be operated in accordance with such rules and regulations as the board of directors may prescribe.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-20. Deposits

Deposit accounts shall be operated in accordance with such rules and regulations as the board of directors may prescribe and as approved in writing by the Credit Union Commissioner. Interest rates on deposits shall not exceed 6 percent per annum unless the rate in ex-



cess of 6 percent per annum shall have first been approved by the Credit Union Commissioner.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-21. Joint Accounts

(a) A member may, subject to approval of the board of directors, designate any person or persons to hold shares, deposits, and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

(b) No credit union organized under the laws of this state, nor any federal credit union domiciled in this state shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the credit union is served with citation or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit.

(c) Shares or share accounts issued by, or deposits made with, any credit union organized under the laws of this state, or any federal credit union domiciled in this state, in the name of two or more persons or to two or more persons or the survivor of either, may be withdrawn on the signature of either party to whom such shares or share accounts were issued, or in whose name such deposit was made, and no recovery shall be had against such credit union for amounts so paid. When shares or share accounts are issued or deposits are made in the name of two or more persons or in the name of their survivor, the survivor of either party shall have power to act in all matters relating to such shares or share accounts or deposits whether the other person or persons named in such shares or share accounts or deposits be living or dead. The repurchase or withdrawal value of shares or share accounts or deposits issued in joint names and dividends thereon, or other rights relating thereto, may be paid or delivered, in whole or in part, to any of such persons who shall make requests therefor, whether the other person or persons be living or dead. The payment or delivery to any such person, on a receipt or acquittance signed by any such person, to whom any such payment or any such delivery of rights is made, shall be a valid and sufficient release and discharge of any such credit union for the payment or delivery so made.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-22. Minors

Shares or deposits may be issued in the name of a minor, and such shares or deposits may be withdrawn by such minor, and payments

made on such withdrawals shall be valid. No such minor under 16 years of age shall be entitled to vote in the meeting of the members either personally or through his parent or guardian, nor may he become a director or committee member until he shall have reached legal age.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-23. Trust Accounts

Shares or deposits may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, may be permitted to vote, obtain loans, hold office or be required to pay an entrance fee. Payment of part or all of such shares or deposits to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of such payment. In the event of the death of the member, and if shares or deposits are so issued or held and the credit union has been given no other written evidence of the existence or terms of any trust, such shares or deposits and any dividends or interest thereon shall be paid to the beneficiary or to his legal representative.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-24. Investments

Funds not used in loans to members may be invested:

(1) in capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are confined or restricted to credit unions, or organizations of credit unions, and provided the purposes for which such agency or association is organized are designed to service or otherwise assist credit union operations;

(2) in obligations of the State of Texas or any subdivision thereof;

(3) in securities, obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the United States government or any agency thereof; or any trust or trusts established for investing directly or collectively in the same;

(4) in loans to other credit unions in an amount not to exceed 25% of the shares, deposits, and surplus of the lending credit union, or any trust or trusts established for lending directly or collectively to credit unions;

(5) in purchases from any liquidating credit union, in accordance with rules and regulations prescribed by the Credit Union Commissioner, notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the

Credit Union Commissioner or by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed five percent of the shares, deposits, and surplus of the credit union;

(6) in an aggregate amount not exceeding two and one-half percent of the credit union's total assets or the amount of its reserve fund, whichever is lesser, in any agency or association of the type described in Subdivision (1) hereof, provided the purposes of any such agency or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations; and

(7) in certificates or passbook-type accounts, insured by the Federal Savings and Loan Insurance Corporation, which are issued by a building and loan association or a savings and loan association domiciled in the United States of America;

(8) in certificates of deposit issued by a state or national bank domiciled in the State of Texas, provided, however, no credit union may purchase, or own at any one time, certificates of deposit totaling in excess of ten (10) percent of the paid-in capital and surplus of such issuing bank.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1219, ch. 440, § 9, eff. June 14, 1973.]

#### Art. 2461-25. Reserve Allocations

(a) At the close of each dividend period, the following amounts shall be credited to a reserve designated as the reserve fund: 20 percent of the net earnings for each of the first five fiscal years of the existence of the credit union, and 10 percent for each of the remaining fiscal years until such fund is equal to 10 percent of the outstanding loans of all types. All entrance fees shall be added to such fund.

(b) The reserve fund shall belong to the credit union and shall be used to meet all losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the Credit Union Department. The board of directors may increase, or if such fund equals or exceeds 10 percent of the outstanding loans, decrease the proportion of the net earnings to be thus set aside, and may transfer part or all of the undivided earnings to the reserve fund.

(c) In addition to such regular reserve, special reserves to protect the interests of members shall be established when required (1) by regulation, or (2) in any special case, when found by the Credit Union Commissioner to be necessary for that purpose.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-26. Dividends

(a) After allocations to required reserves, a credit union may declare a dividend from undivided earnings at the discretion of its board of directors and as its bylaws may provide. Such dividend shall not exceed the rate of six percent per annum for the dividend period unless the rate in excess of six percent per annum shall have been first approved by the Credit Union Commissioner.

(b) Dividends shall be paid on all fully paid shares outstanding at the beginning of the dividend period, but shares which become fully paid during the dividend period shall be entitled to a proportional part of the dividend calculated from the first day of the month following such payment in full.

(c) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 10 days of that month. No dividends shall be paid on shares which are withdrawn during the dividend period.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-27. Share Reduction

Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members. If thereafter the credit union shall realize from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided among the shareholders whose assets were reduced, but only to the extent of such reduction.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-28. Merger

(a) Any credit union may, with the approval of the Credit Union Department, merge with any other credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of each credit union present at the meetings of members duly called for such purpose, unless a special meeting of the members of either of the credit unions has been waived by the Credit Union Commissioner. After agreement by the directors and approval by the members of each credit union, the chairman of the board and secretary of each credit union shall execute a certificate of merger, which shall set forth all of the following:

(1) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) the vote in favor of adoption of the plan;

(3) a copy of the resolution or other action by which the plan was agreed upon;

(4) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(5) the vote by which the plan was approved by the members.

(b) Such certificates and a copy of the plan of merger agreed upon shall be forwarded to the Credit Union Department and, upon approval, returned to the merging credit unions.

(c) Upon any such merger so effected, all property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected.

(d) This section shall be construed, whenever possible, to permit a credit union chartered under any other act to merge with one chartered under this Act.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-29. Reports

Credit unions organized under this Act shall report to the Credit Union Department annually on or before the first day of February on forms supplied by the Credit Union Department for that purpose. Each credit union shall pay to the Credit Union Commissioner at the time of the filing of this report the sum of \$10 as a filing fee, unless said credit union shall have been chartered within the past six months of the calendar year, in which case no filing fee shall be charged. Additional reports may be required by the Credit Union Department as is deemed necessary. If any report remains in arrears for more than 15 days, a fine of \$5 for each such day such report remains in arrears shall be levied against such offending credit union unless waived by the commissioner for good cause. All credit unions chartered under this Act shall be exempt from all franchise or other license tax; nor shall any intangible property of such associations be taxable by this state or any political subdivision thereof.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1219, ch. 440, § 10, eff. June 14, 1973.]

#### Art. 2461-30. Supervision Fees

(a) Not later than January 31, 1972, each credit union shall pay to the Credit Union Commissioner, for the preceding calendar year, a supervision fee based upon its assets as of December 31 of each preceding year.

(b) The Credit Union Commissioner, after securing approval of the Credit Union Commission, shall before December 31 of each year, notify each credit union of the amount of supervision fee due not later than January 31 of the succeeding year. The amount of the supervision fees collected and the amount of the total fees collected shall not be in excess of the

amount determined by the Credit Union Commission as necessary for the operation of the Credit Union Department for the succeeding year.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1971, 62nd Leg., p. 1070, ch. 223, § 1, eff. May 17, 1971.]

#### Art. 2461-31. Records

All records of a credit union incorporated under this Act shall be kept for a period of four years from the date of making same or from the date of the last entry thereon. No credit union shall be required to receipt for payment except as may be provided in the by-laws, nor shall it be necessary to endorse a note showing date of payments or balance due.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-32. Examinations

(a) The Credit Union Department annually shall examine, or cause to be examined, each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of said department full access to all books, papers, securities, records, and other sources of information under their control; and for the purpose of such examination said representatives shall have power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(b) A report of such examination shall be forwarded to the chairman of the board of each credit union. Said report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 30 days after the receipt of such report a general meeting of the directors and committeemen shall be called to consider matters contained in the report. A reply to the Credit Union Department shall be forwarded by the board of directors if such comments are required by the Credit Union Department.

(c) For the purpose of such examinations each credit union shall pay an examination fee based upon the cost of performing the examination and to bear a proportionate share of the expenses of the Credit Union Department, in accordance with schedules adopted by the Credit Union Commissioner after approval has been secured from the Credit Union Commission.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1971, 62nd Leg., p. 1070, ch. 223, § 2, eff. May 17, 1971.]

#### Art. 2461-33. False Reports

Any person who shall knowingly make, utter, circulate, or transmit to another or others, any statement untrue in fact, derogatory to the financial condition of any credit union in the state, with intent to injure any such credit union, or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent, shall be guilty of a felony and

upon conviction shall be punished by a fine of not more than \$5,000 or confined in the state penitentiary not more than five years, or both. [Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-34. Conversion

The Credit Union Commissioner shall issue regulations to permit the conversion of a credit union organized under this Act to a federal credit union, and the conversion of a federal credit union to a credit union organized under this Act.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-35. Officers, Directors and Employees—Cease and Desist—Removal—Appeal

(a) If the Credit Union Commissioner finds that an officer, director, or employee of a credit union, or the credit union itself acting through any authorized person, has committed any of the following violations or practices:

(1) violates the provisions of this Act or any other law or regulation applicable to credit unions; or

(2) refuses to comply with the provisions of this Act or any other law or regulation applicable to credit unions; or

(3) willfully neglects to perform his duties, or commits a breach of trust or of fiduciary duty; or

(4) commits any fraudulent or questionable practice in the conduct of the credit union's business that endangers the credit union's reputation or threatens its solvency; or

(5) refuses to submit to examination under oath; or

(6) conducts business in an unsafe or unauthorized manner; or

(7) violates any conditions of its charter or of any agreement entered with the Credit Union Commissioner or the Credit Union Department; then in such event the Credit Union Commissioner shall give notice in writing to such credit union and the offending officer, director, or employee, stating the particular violations or practices complained of, and the Credit Union Commissioner shall call a meeting of the directors of the credit union and lay before them such findings and demand a discontinuance of such violations and practices as have been found.

(b) If the Credit Union Commissioner shall find that an order to cease and desist from such actions is necessary and in the best interests of the credit unions involved and its depositors, creditors and members, then at the directors' meeting above provided or within 30 days thereafter the Credit Union Commissioner may serve on the credit union, its board of directors, and any offending officers, directors, or employees, a written order to cease and desist from the violations and practices enumerated therein and to take such affirmative ac-

tion as may be necessary to correct the conditions resulting from such violations or practices. Said cease and desist order shall be effective instanter if the Credit Union Commissioner finds that immediate and irreparable harm is threatened to the credit union, its depositors or members; otherwise, said order shall state the effective date, not less than 10 days after delivery or mailing of the notice thereof. Unless the credit union or directors shall file a notice of appeal with the Credit Union Commissioner within 10 days after such delivery or mailing of notice, whichever is the case, the order shall be final. A copy of said order shall be entered upon the minutes of the directors, who shall thereafter certify to the Credit Union Commissioner in writing that each has read and understood the order.

(c) If the Credit Union Commissioner subsequently finds by examination or other credible evidence that the offending officer, director, or employee has continued such violations or practices as previously charged and found by the Credit Union Commissioner, after notice and demand made under Paragraph (a) above, and further finds that removal from office is necessary and in the best interests of such credit union and its depositors, creditors, and members, then the Credit Union Commissioner may serve such officer, director, or employee with an order of removal from office. Said order shall state the grounds for removal with reasonable certainty and shall state the effective date of removal, not less than 10 days after delivery or mailing of the notice thereof. Unless the credit union, the directors, or the persons removed shall file a notice of appeal with the Credit Union Commission within 10 days after such delivery or mailing of notice, whichever is the case, the order of removal shall be effective and final and said person shall thereafter be prohibited from further holding office or employment by, or participating in the affairs of, the said credit union. A copy of such order shall be entered upon the minutes of the directors, and an officer shall acknowledge receipt of such order and certify to the Credit Union Commissioner that such person has been removed from office.

(d) Upon the timely filing of an appeal the Credit Union Commission shall set a time and place for hearing such appeal, giving reasonable notice thereof to the appellants. The commission may adopt such rules or procedure as may be necessary to govern the fair hearing and adjudication of the questions appealed.

(e) After a cease and desist order or an order of removal becomes effective and final, should a credit union or its board of directors or any duly authorized officer of said credit union fail or refuse to comply with such an order, then the Credit Union Commissioner may, upon notice, assess a penalty against said credit union in an amount not to exceed \$100 per day for each day the credit union is in violation of said order of the Credit Union Commissioner or the commission. Failure to remit any

penalty so assessed shall subject the credit union to a suit for collection to be instituted in the district court of Travis County.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1220, ch. 440, § 11, eff. June 14, 1973.]

#### Art. 2461-35A. Suspension

(a) If the Credit Union Commissioner finds that the capital of a credit union is seriously impaired, or that it is conducting its affairs in an unsafe, unauthorized or unlawful manner, or that it refuses to submit to examination, or is hindering examination, he may take possession of the property and business of such credit union and retain possession thereof until such time as the Commissioner may determine either to permit it to resume business or to order its liquidation. Simultaneously therewith, the Credit Union Commissioner shall cause notice to be given to the board of directors, which notice shall call for a hearing within 10 days for the board of directors to show cause why such suspension should not be continued or such credit union liquidated. The board of directors may waive such hearing.

(b) If the Credit Union Commissioner, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations, the Credit Union Commissioner may issue a notice of involuntary liquidation and appoint a liquidating agent who shall proceed as provided in Section 36 of this Act. The credit union may request a stay of execution of such action by appealing to the appropriate court of the jurisdiction in which the credit union is located.

[Acts 1973, 63rd Leg., p. 1221, ch. 440, § 12, eff. June 14, 1973.]

#### Art. 2461-36. Liquidation

(a) Whenever the Credit Union Commissioner finds that the interests of depositors and creditors of a credit union are seriously jeopardized through insolvency or imminent insolvency and that it is to the best interest of such depositors and creditors that the credit union be closed and its assets liquidated, he may close and liquidate the credit union, unless its board of directors close the credit union and place it in his hands for liquidation.

(b) At any time within five days after the Credit Union Commissioner has closed any credit union under the provisions set out above, such credit union acting through its directors may sue in the district court of the credit union's domicile to enjoin the commissioner from liquidating the credit union, and the court, or the judge thereof if in vacation, may, without notice or hearing, restrain the commissioner from liquidating the assets of such credit union pending hearing on the merits, and shall, in that event, instruct the commissioner to hold the assets of such credit union in his possession pending final disposition of such suit. The commissioner shall thereupon refrain from liquidating such assets, provided, however, the commissioner may with ap-

proval of the district judge, take such actions as may be necessary or proper to prevent loss or depreciation in the value of the assets.

(c) The court shall, as soon as possible, hear the suit upon its merits and shall enter a judgment either enjoining the commissioner from liquidating the assets of the credit union, or refusing to issue such an injunction. Appeal shall lie from such judgment as in other civil cases, but the commissioner, irrespective of the character of judgment entered by the trial court or any supersedeas bond filed, shall retain possession of the assets of such credit union pending final disposition on appeal.

(d) At a meeting especially called to consider the matter, a majority of the members present, not less than a quorum, may vote to dissolve the credit union, provided a copy was mailed to the members of the credit union at least 10 days prior thereto. The credit union shall thereupon immediately cease to do business except for the purposes of liquidation, and the chairman of the board and secretary shall, within five days following such meeting, notify the Credit Union Department of intention to liquidate and shall include a list of the names of the directors and officers of the credit union together with their addresses.

(e) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board of directors, or in the case of involuntary dissolution, the liquidating agent, shall use the assets of the credit union to pay: first, expenses incidental to liquidation including any surety bond that may be required; second, any liability due nonmembers; third, depositors; fourth, savings club accounts as provided in this Act. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(f) Liquidating agents shall have power and authority, subject to the control and supervision of the Credit Union Commissioner and under such rules and regulations as the commissioner may prescribe:

(1) to receive and take possession of the books, records, assets and property of every description of the credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the credit union;

(2) to receive, examine, and pass upon all claims against the credit union in liquidation, including claims of members on shares;

(3) to make distribution and payment to creditors and members as their interest may appear; and

(4) to execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(g) Subject to the control and supervision of the Credit Union Commissioner and under such rules and regulations as the commissioner may prescribe, the liquidating agent of a credit union in involuntary liquidation shall:

(1) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of the credit union in voluntary liquidation is less than \$1,000, unless the commissioner shall find that its books and records do not contain a true and accurate record of its liabilities, he shall declare the credit union in liquidation to be a "no publication" liquidation, and publication notice to creditors and members shall not be required in such case;

(2) from time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjusted in a court of competent jurisdiction and, after the assets of such credit union have been liquidated, make further dividends on all claims previously proved or adjusted, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and

(3) in a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after 60 days shall have elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interest may appear.

(h) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the commissioner in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the commissioner shall cancel

the charter of such credit union; but the corporate existence of the credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or his duly appointed successor, or such persons as the commissioner shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(i) The liquidating agent, in his individual capacity, or for his personal benefit, shall not acquire any of the assets of a credit union in liquidation, shall not purchase any loans and, except for the compensation he shall receive as set forth in his contract of employment as liquidating agent, he shall not obtain from his activity as liquidating agent any compensation or profit for himself or any member of his family or any person associated with him in any business enterprise except the credit union involved. Any person who shall participate in a violation of this provision shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$1,000 and not less than \$100 or by confinement in the county jail for not more than six months, or by both such fine and jail sentence.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1222, ch. 440, § 13, eff. June 14, 1973.]

#### Art. 2461-37. Subsidiary Offices

(a) Subject to the prior written approval of the Credit Union Commissioner, the credit union may establish offices at locations other than its main office if the maintenance of such offices shall be reasonably necessary to furnish services to its membership. No additional offices shall be established to serve persons who are not entitled to membership as defined in the common bond provision of the articles of incorporation and would not be entitled to services of the credit union at its main office. The Credit Union Commissioner shall have the authority to issue notice and hold a public hearing to determine if the establishment of the subsidiary office or offices is necessary and in the best interest of the credit union.

(b) All books of account shall be maintained at the main office of the credit union.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-38. Credit Union Commission

(a) There is hereby established and created the Credit Union Commission which shall consist of six members, a majority of whom shall be from state-chartered credit unions doing business in this state. The Credit Union Commission shall serve as an advisory board to the Credit Union Commissioner as to general policies and shall have such other duties, powers, and authority as may be conferred upon it by

law. Upon the effective date of this Act, the jurisdiction, authority, powers, and duties now conferred and imposed by law upon the Banking Commissioner in relation to the management, control, regulation, and general supervision of credit unions, are hereby transferred to, conferred, and imposed upon the Credit Union Commission and Credit Union Commissioner. The books, records, documents, equipment, and supplies of the Banking Commissioner relating to credit unions shall be transferred to the Credit Union Department. This Act shall not be construed to disturb the continuing existence of any credit union heretofore chartered and existing under the law of this state, and all credit unions heretofore organized and existing under the law of this state shall be governed and controlled by the provisions of this Act.

(b) The Credit Union Department shall make a thorough and intensive study of the credit union statutes with a view to so strengthening said statutes as to attain and maintain the maximum degree of protection to shareholders and depositors, and shall report every two years to the legislature by filing with the clerks of the Senate and House of Representatives the results of its study together with its recommendations.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-39. Qualification of Members

All members of the Credit Union Commission shall have at least five years' experience in the operation of a credit union.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-40. Residence of Members

No two members of the Credit Union Commission shall be residents of the same state senatorial district.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-41. Appointment; Term

The Governor of the State of Texas, subject to confirmation by the Senate, shall appoint the members of the Credit Union Commission each of whom, except the initial appointee, shall serve for a term of six years. The Governor shall promptly after the effective date of this Act appoint the members of the Credit Union Commission and shall designate the terms to be served by each appointee. The terms of two members shall expire February 15, 1971; the terms of two members shall expire February 15, 1973; and the terms of two members shall expire February 15, 1975. The terms of each member's successor shall be for a period of six years terminating on the anniversary of the expiration date of each member's term, provided, however, any appointment to fill any vacancy shall only be for the remainder of the term. Members of the Credit Union Commission shall serve until their successors are appointed and qualified.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-42. Vacancies

The office of a member of the commission shall be vacant if the member ceases to have the qualifications which were necessary to his original appointment or in the event he ceases to hold a position in the operation of a credit union operating in this state. In the event of a vacancy on the Credit Union Commission for any cause, the governor shall appoint a qualified person to fill the unexpired term.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-43. Confirmation of Appointments

In event of appointment of any member of the Credit Union Commission while the Legislature is in session, the appointment shall be promptly related to the Senate for confirmation, and in event of any such appointment while the Legislature is not in session, such appointment shall be promptly related to the Senate at the next meeting of the Legislature. If the Senate should refuse to confirm any appointment, the office shall thereupon become vacant.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-44. Expenses and Compensation of Members

Each member of the Credit Union Commission shall be reimbursed for all expenses incidental to travel, board, and lodging incurred by him in connection with the performance of his official duties at any regular or special meeting of the commission, but no salary shall be paid to members of the commission.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-45. Disqualification of Members

No member shall act at any meeting of the commission when the matter under consideration specifically relates to any credit union in which such member is an officer, director, or shareholder.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-46. Meetings

The Credit Union Commission shall hold at least two regular meetings each year. Special meetings of the commission may be called by the Credit Union Commissioner or by any three members of the commission. The commission may adopt rules and regulations governing the time and place of meetings and character of notice of special meetings, the procedure by which all meetings shall be conducted, and other similar matters. A majority of the membership of the commission shall constitute a quorum for the purpose of transacting any business coming before the commission. The Credit Union Commissioner shall preside at all meetings of the commission but shall not vote except in the case of a tie or when his vote is necessary for effective action; provided that the commissioner shall not preside or vote at any meeting when the Credit Union Commission is considering the election of the commissioner, but the commission shall elect one of its members to act as temporary chairman, who

shall be entitled to vote. The commission shall keep adequate minutes of the proceedings of all meetings.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

**Art. 2461-47. Election; Compensation; Powers and Duties**

(a) By and with the advice and consent of the Senate, the Credit Union Commission shall elect a Commissioner of Credit Unions who shall be an employee of said commission and subject to its orders and directions. The Credit Union Commissioner shall have had not less than five years' practical experience within the 10 years prior to his election in the executive management of a credit union doing business in this state, provided that experience as Credit Union Supervisor or Credit Union Examiner shall be deemed credit union experience within the meaning of this section. The Credit Union Commissioner shall receive such compensation as is fixed by the Credit Union Commission but not in excess of that paid the governor, and such compensation shall be paid from funds of the Credit Union Department.

(b) The Credit Union Commissioner shall appoint Credit Union Examiners in the manner now provided by law, and may, when authorized to do so by the Credit Union Commission and subject to the approval of the Credit Union Commission, appoint a Deputy Credit Union Commissioner having the same qualifications as are required of the Credit Union Commissioner. The Deputy Credit Union Commissioner, if any, shall, during the absence or inability of the Credit Union Commissioner, be vested with all of the powers and perform all of the duties of the Credit Union Commissioner. In the absence of an appointment of a Deputy Credit Union Commissioner, the Credit Union Commissioner may designate a Credit Union Examiner who shall, during the absence or inability of the Credit Union Commissioner, be vested with all of the powers and perform all of the duties of the Credit Union Commissioner. The Deputy Credit Union Commissioner, if any, the Credit Union Examiners, and all other officers and employees of the Credit Union Commission shall receive such compensation as is fixed by the Credit Union Commission which shall be paid from funds of the Credit Union Department.

(c) The Credit Union Commissioner, the Deputy Credit Union Commissioner, if any, each Credit Union Examiner, and every other officer and employee of the Credit Union Commission, shall, before entering upon the duties of his office, take an oath of office and make a fidelity bond in the sum of \$10,000, payable to the Governor of the State of Texas, and his successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the United States Government. Each bond required under this section shall be in the form approved by the Credit Union Commission. The premiums for such bonds shall be paid out of funds of the Credit Union Department.

(d) Upon the appointment and qualification of a Credit Union Commissioner under this Act, such Credit Union Commissioner shall in person or by and through the Deputy Credit Union Commissioner, if any, the Credit Union Examiners, or other officers of the Credit Union Commission, supervise and regulate, in accordance with the rules and regulations promulgated by the Credit Union Commissioner together with the Credit Union Commission, all credit unions doing business in this state (except federal credit unions organized and existing under federal law), and he shall have and perform all of the duties and shall exercise all of the powers theretofore imposed upon the Banking Commissioner and upon the Credit Union Supervisor under and by virtue of the laws of this state with reference to credit unions, and the Banking Commissioner shall be relieved of all responsibility and authority relating to the granting of charters and the regulation and supervision of such credit unions.

(e) The rule-making power of the Credit Union Commissioner shall be exercised only with the advice and approval of the Credit Union Commission. Each proposed rule or regulation shall be prepared by the Credit Union Commissioner on his own motion or upon request of the commission. Each proposed rule or regulation shall be submitted promptly to the commission members for review and consideration. Upon the request of any commission member, the Credit Union Commissioner shall call a special meeting of the commission to consider any proposed rule or regulation. No permanent or standing rule or regulation or amendment thereto shall be promulgated unless written notice of the terms on substance thereof shall have been given to all credit unions subject to the proposed rule or regulation, and such credit unions and other interested parties shall have been provided a period of time, not less than 60 days, within which to submit comments, recommendations, or objections. All rules and regulations shall be subject to review, reconsideration and rejection by the Credit Union Commission, and nothing herein is intended to reduce or modify the authority of the commission in this regard; provided the Credit Union Commissioner shall be authorized to promulgate interim rules and regulations in those circumstances where deemed necessary for the best interests and protection of the credit unions of this state. Every such interim rule or regulation shall be effective for a period of 90 days only and thereafter only upon extension and approval by the Credit Union Commission. Simultaneously with the promulgation of any such interim rules or regulations, the Credit Union Commissioner shall cause written notice to be given to each member of the Credit Union Commission in the same manner and under the same procedures as provided herein for proposed rules and regulations.

(f) The Credit Union Commissioner shall collect all fees, penalties, charges and revenues required to be paid by credit unions and shall from time to time as directed by the Credit Un-



ion Commission submit to such commission a full and complete report of the receipts and expenditures of the Credit Union Department, and the Credit Union Commission may from time to time examine the financial records of the Credit Union Department or cause them to be examined. In addition, the Credit Union Department shall be audited from time to time by the State Auditor in the same manner as other state departments, and the actual costs of such audits shall be paid to the State Auditor from the funds of the Credit Union Department. Notwithstanding anything to the contrary contained in any other law of this state, all fees, penalties, charges, and revenues collected by the Credit Union Department from every source whatsoever shall be retained and held by said department, and no part of such fees, penalties, charges, and revenues shall ever be paid into the General Revenue Fund of this state. All expenses incurred by the Credit Union Department shall be paid only from such fees, penalties, charges, and revenues, and no such expense shall ever be a charge against the funds of this state. The Credit Union Commission shall adopt, and from time to time amend, budgets which shall direct the purposes, and prescribe the amounts, for which the fees, penalties, charges, and revenues may be expended. The commission shall, as of December 31, 1969, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements of the Credit Union Department for each calendar year and shall within the first 60 days of each succeeding regular session of the Legislature make a report to the appropriate committees of the House and Senate charged with considering legislation pertaining to credit unions.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969; Acts 1973, 63rd Leg., p. 1224, ch. 440, § 14, eff. June 14, 1973.]

#### Art. 2461-48. Transfers to General Revenue Fund

The Credit Union Department shall cause to be transferred each year of the biennium the sum of \$1,000 to the General Revenue Fund, to cover the cost of governmental service rendered by other departments.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

#### Art. 2461-49. Special Assessment

Within 30 days after the effective date of this Act, each credit union shall pay to the Credit Union Commissioner an assessment equal to the supervision fee paid to the Banking Commissioner for the year ending December 31, 1968; said assessment fee to be used by the Credit Union Commissioner in the initial operation of the Credit Union Department. Thereafter each year, each credit union shall pay the supervision fee in accordance with the schedule set forth in Section 30 of this Act.

[Acts 1969, 61st Leg., p. 540, ch. 186, eff. May 13, 1969.]

Arts. 2462 to 2484d. Repealed by Acts 1969, 61st Leg., p. 540, ch. 186, § 50, eff. May 13, 1969

## 2. AGRICULTURAL AND LIVESTOCK POOLS

### Art. 2485. May Incorporate

Any association of persons, which may include corporations duly chartered, State banks and trust companies, National banks and trust companies, and co-operative associations composed of persons engaged in producing or producing and marketing staple agricultural products or livestock, or both, may organize a pool for the purpose of borrowing and lending money on agricultural products or livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock. Any number of persons, not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both such purposes, and may use any of such livestock or farm products, or both, as security, in financing such enterprises; and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation.

[Acts 1925, S.B. 84.]

### Art. 2485a. May Incorporate

Any association of persons, which may include corporations duly chartered, State banks and trust companies, and national banks and trust companies, and cooperative associations composed of persons engaged in producing or producing and marketing staple agricultural products, or livestock, or both, may organize pools for the purpose of borrowing and lending money on agricultural products and livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock.

Any number of persons not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both such purposes, and may use any of such livestock or farm products, or both, as security in financing such enterprises, and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation.

[1925 P.C.]

### Art. 2486. Definitions

"Pools" as used in this title shall be held to mean agricultural financial pools and livestock financing pools; "agricultural products" shall be held to mean any or all products of the farm, orchard or dairy usually classed as agricultural products other than livestock; "livestock" shall be held to mean any herd of cattle, sheep, goats or swine; "margins" shall be held to mean additional security in money of legal tender of the United States.

[Acts 1925, S.B. 84.]

**Art. 2486a. Definitions**

The term "pools" shall mean agricultural financing pools.

The term "agricultural products" shall mean any or all products of the farm, orchard and dairy usually classed as agricultural products other than livestock.

The term "livestock" shall mean any herd of cattle, sheep, goats or swine.

The term "margins" shall mean additional surety in money of legal tender of the United States.

[1925 P.C.]

**Art. 2487. May Borrow**

Such pools shall have the right to borrow money, and to use as security for such borrowed funds, the security given by those borrowing money from such pooling organizations, and shall be authorized to co-operate with the Federal Reserve Banks and Federal Farm Loan Banks under the provisions of the Federal laws affecting farm credits.

[Acts 1925, S.B. 84.]

**Art. 2488. May Loan**

Such pools are authorized to lend money on agricultural products that are stored in bonded licensed warehouses and for which there is outstanding therefor a negotiable bonded warehouse receipt issued in accordance with the Uniform Warehouse Receipt Act.<sup>1</sup> They are also authorized to lend money to the owners of herds upon the terms and conditions as hereinafter provided, and such herds shall be permitted to remain in the possession of the owner or owners thereof, or in the possession of an agent or representative of the owner or owners. A mortgage against such herd, or shipping documents issued against such herds in transit, may be used as collateral for such loan.

[Acts 1925, S.B. 84.]

<sup>1</sup> Article 5612 et seq. (repealed; see, now, Business and Commerce Code, § 7.101 et seq.).

**Art. 2489. Loans and Interest**

The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks. No loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing, or producing and marketing, staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon.

[Acts 1925, S.B. 84.]

<sup>4</sup> West's Tex. Stats. & Codes—2

**Art. 2489a. Loans and Interest**

The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks, provided that no loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing or producing and marketing staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon.

[1925 P.C.; Acts 1923, 2nd C.S., p. 82.]

**Art. 2490. Agents for Borrowers**

Such pools shall have the right to act as agents for all borrowers in the sale of such commodities, articles or things on which loans have been made. The commissions charged for such service shall not exceed fifty cents per bale for cotton sold, and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein.

[Acts 1925, S.B. 84.]

**Art. 2490a. Agents for Borrowers**

All such pools shall have the right to act as agents for all borrowers, in the sale of such commodities, articles or things on which loans have been made and the commissions charged for such service shall not exceed fifty cents per bale for cotton sold and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein.

[1925 P.C.]

**Art. 2491. Warehouses and Concentration Places**

All such pools are authorized to own, maintain, and operate bonded and licensed warehouses when such warehouses are deemed necessary in the conduct of said business, and to own or maintain concentration places, including railroad sidings.

[Acts 1925, S.B. 84.]

**Art. 2492. Margins**

Such pools shall be authorized to demand margins, such as is necessary to keep the market value of any commodity, article or thing on which a loan has been made up to within sev-

enty-five per cent of the value of such commodity, article or thing on date of loan at any time during the life of such loan, and shall have the right to sell any commodity, article or thing on which a loan has been made when the owner or owners thereof fail or refuse to put up or provide for such margin. All such margins shall be credited to the account of such borrower and same shall be taken into account when such loan or loans shall be liquidated.

[Acts 1925, S.B. 84.]

#### Art. 2493. Loan Limit and Liquidations

Such pools are authorized to make loans as herein provided, the total of which shall at no time exceed ten times the total of the capital stock and surplus of such organizations. The borrower of any funds from such pool shall have the right to liquidate his loan at any time during the contract period thereof, upon full and satisfactory settlement of all claims against such borrower due such organization.

[Acts 1925, S.B. 84.]

#### Art. 2494. Bond

Before engaging in business in this State, such pools shall furnish a good and sufficient bond, conditioned upon the faithful performance of its duties and responsibilities as a pooling organization, said bond to be for ten per cent of the capital stock of such pool. Such bonds shall be approved by the commissioners court of the county in which such pool is organized, or in which is located the home office of such pool. All such bonds shall be certified to the Commissioner of Agriculture who shall, upon receipt of such bond and after satisfying himself as to its genuineness, issue to such pool a certificate of authority to conduct a pool in accordance with the provisions of this law, upon the payment of a fee of ten dollars which shall be collected by said Commissioner and by him paid into the State Treasury.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 145, ch. 94, § 1.]

#### Art. 2495. Officers to Furnish Bonds

The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such pooling organization. The said board of directors shall elect a president, vice-president, secretary and treasurer from said board of directors, and such board shall be authorized to employ a manager and others to conduct the affairs of the pool. The secretary-treasurer and all officers in charge of the management shall be required to furnish to such pool, a good and sufficient bond conditioned upon the faithful performance of duty. Such bond shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs

of such pools when they have not so furnished bond.

[Acts 1925, S.B. 84.]

#### Art. 2495a. Officers to Furnish Bonds

The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such organization. The board of directors shall elect said president, vice-president, secretary and treasurer from the said board of directors. The secretary-treasurer and each officer in charge of the management shall be required to furnish to such pool a good and sufficient bond conditioned upon the faithful performance of duty. Such bonds shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond.

[1925 P.C.]

#### Art. 2496. To File Statement

All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Agriculture a sworn statement showing the amount of business done, the number of negotiable receipts on which loans have been made and the values of such commodities, the total of all such loans, the total of all the obligations of the pool, to whom due and the amount of interest being paid on same, the quantity or number of sales made for clients, the gross receipts of such sales, the amount of commissions charged thereon, and the number and value of all livestock mortgages and other securities.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 39, ch. 26, § 1.]

#### Art. 2496a. To File Statement

All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Markets and Warehouses<sup>1</sup> a sworn statement of the condition of the affairs of such pool, and such statement shall be made to show the amount of business done, the number of negotiable receipts on which loans have been made and the value of such commodities, the total of all such loans and the total of all obligations of the pool and to whom due and the amount of interest being paid on same and the quantity or number of sales made for clients and the gross receipts of such sales and the amount of commissions charged thereon, and the number and value of all live stock mortgages and other securities.

[1925 P.C.]

<sup>1</sup> Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, abolished and powers and duties transferred to the Commissioner of Agriculture, see art. 5611.

#### Art. 2497. Pools May Use Security

All such pools shall be authorized to use such security or collateral held by them as se-

curity for loans made to such pooling organizations. When any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold, the negotiable warehouse receipt shall be delivered to the maker thereof, and cancelled in accordance with the provisions of the Warehouse Acts of this State.

[Acts 1925, S.B. 84.]

#### Art. 2497a. Pools May Use Security

All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations, provided that when any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold the negotiable receipt shall be delivered to the maker thereof, and canceled in accordance with the provisions of the Warehouse Acts of this State.

[1925 P.C.]

#### Art. 2498. Term of Loan

The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on livestock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both.

[Acts 1925, S.B. 84.]

#### Art. 2498a. Term of Loan

The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on live stock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both.

[1925 P.C.]

#### Art. 2499. Unlawful to Dispose of Receipt

No person shall dispose of any negotiable bonded warehouse receipt placed with any bonded organization as security on loan, or to be held by such pool, pending the sale of any such commodity, article or thing represented by such receipt except as provided herein.

[Acts 1925, S.B. 84.]

#### Art. 2499a. Unlawfully Disposing of Receipt

No person shall dispose of any negotiable bonded warehouse receipt placed with any pooling organization as security on loan, or to be held by such pool pending the sale of any such commodity, article or thing represented by such receipt, except as provided for in this chapter.

[1925 P.C.]

#### Art. 2499b. Penalty

Whoever violates any provision of this chapter shall be fined not less than twenty-five nor more than one thousand dollars, or be imprisoned

in jail not more than one year, or be both so fined and imprisoned.

[1925 P.C.]

### 3. MUTUAL LOAN CORPORATIONS

#### Art. 2500. Purpose

Ten or more persons, five of whom shall be citizens of Texas, may organize corporations to aid their member stockholders in producing, or producing and marketing of staple agricultural products, or in acquiring, raising, breeding, fattening or marketing of livestock.

[Acts 1925, S.B. 84.]

#### Art. 2501. Powers

Such corporations shall have power:

1. To accumulate and lend money to their member stockholders where such loans are made for the purposes provided for in the Federal "Agricultural Credits Act of 1923."<sup>1</sup>

2. To lend money to their member stockholders where the money loaned is to be used for the production or production and marketing of staple agricultural products, or for the acquiring, raising, breeding, fattening or marketing of livestock, or the purchase of the capital stock of such corporations and in order to obtain the funds to loan their members, such corporations are authorized to purchase, sell, indorse and discount the notes of its member stockholders and by indorsement to become liable as principal makers thereof, where such notes are secured by warehouse receipts or shipping documents covering such agricultural products or chattel mortgages on livestock or by crop mortgages or other acceptable chattel mortgages or other acceptable security.

[Acts 1925, S.B. 84.]

<sup>1</sup> 7 U.S.C.A. § 1921 et seq.

#### Art. 2502. Capital Stock

Such corporations must have a fully paid up capital stock of not less than ten thousand dollars at the time of the filing of the articles of incorporation. Ten thousand dollars of such capital shall be kept intact and invested in securities approved by law for investments of savings banks. In the discretion of the organizers or board of directors, the capital stock may be divided into preferred and common stock, and in such case the articles of incorporation shall provide for the payment of dividends on preferred stock and for the retirement of both kinds of stock. Preferred stock shall be issued in such amount only as provided in the articles of incorporation. No dividends shall be paid on common stock until dividends provided to be paid on the preferred stock have been fully paid at the rate provided in the articles of incorporation. With the approval of the Banking Commissioner first obtained, any domestic corporation except a savings bank may invest any part of its funds in the preferred stock of such corporation.

[Acts 1925, S.B. 84.]

**Art. 2503. Ratio of Capital to Loans**

Such corporations shall automatically increase their capital stock at the rate of five (5) per cent of the amount of loans made by them to their member stockholders, and their articles of incorporation and bylaws shall so provide. Such corporations shall not make loans in excess of twenty (20) times their unimpaired capital stock represented by the part of their capital stock so automatically increased.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

**Art. 2504. Articles of Incorporation**

The articles of incorporation shall further provide: that each applicant for a loan or discount by such corporation shall become a subscriber of its common stock in an amount equal to at least five (5) per cent of the loan or discount applied for, to be fully paid for upon, or before, the closing of such loan or granting of such discount, provided the board of directors may waive such requirement if the borrower is already the owner of sufficient stock; and that the corporation may put<sup>1</sup> in, out of available funds, any outstanding stock at the book value thereof, as conclusively determined by the directors of such corporation.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

<sup>1</sup> Probably should read "buy" as before the amendment of 1937.

**Art. 2505. Semi-annual Report**

On or before the tenth day of each January and July, such corporation shall file with the Secretary of State a report showing its true financial condition on the first days of January and July, and the amount of capital stock, both preferred and common, then outstanding, including that added by the automatic increase. Such corporations shall not pay a franchise tax.

[Acts 1925, S.B. 84.]

**Art. 2506. Liability of Stockholders**

Except for debts lawfully contracted between a member stockholder and the corporation, no stockholder either preferred or common, shall be liable for the debts, contracts or engagements of the corporation beyond the par value of the stock owned by such stockholder, and the stock, both common and preferred, shall be non-assessable.

[Acts 1925, S.B. 84.]

**Art. 2507. Rate of Interest**

No corporation organized under the provisions of this Chapter shall, in making loans to its members, or discounting notes of the members of such corporation, charge the member borrower in excess of three (3) per cent per annum of the rate of discount established and promulgated by the Farm Credit Administration for discounts made by the Federal Intermediate Credit Banks.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

**Art. 2507a. Amendatory Act Applicable to Existing Corporations**

The provisions of this amendatory Act<sup>1</sup> shall be applicable to all existing corporations as well as those hereafter organized and existing under the provisions of Articles 2500 to 2507, inclusive, of the Revised Civil Statutes of Texas, 1925, as amended, and such existing corporations may avail themselves of the provisions of this Act regardless of any existing liabilities of such corporations, and be it so enacted.

[Acts 1937, 45th Leg., p. 592, ch. 296, § 2.]

<sup>1</sup> Articles 2503, 2504, 2507, 2507a.

**4. CO-OPERATIVE CREDIT ASSOCIATIONS****Art. 2508. Purposes**

Ten or more persons, citizens of this State, who are engaged in the production, or production and marketing of staple agricultural products, or the raising, breeding, feeding, fattening or marketing of live stock, may organize private cooperative credit associations not for profit.

[Acts 1925, S.B. 84.]

**Art. 2509. Powers**

Such associations shall have the following powers:

1. To borrow for and lend money to its members only.

2. To discount or rediscount for its members only, and to purchase and sell the notes of its members, or such other evidences of indebtedness as may be discounted or rediscounted under the provisions of the Federal "Agricultural Credits Act of 1923,"<sup>1</sup> and under the terms, rules and regulations prescribed by the Federal Farm Loan Board,<sup>2</sup> and to that end may indorse all bills, notes or other evidences of indebtedness of its members.

3. And to do such acts as are permitted to associations generally organized under the laws of this State where not in conflict herewith.

[Acts 1925, S.B. 84.]

<sup>1</sup> 7 U.S.C.A. § 1921 et seq.

<sup>2</sup> Functions transferred to Farm Credit Administration. See 12 U.S.C.A. ch. 7, note.

**Art. 2510. Capital Stock**

Such associations may be organized with or without capital stock, but if organized to lend money secured by chattel mortgages on live stock, shall have a capital stock. Associations having a capital stock shall automatically increase the same at the rate of ten per cent of the amount of loans or discounts made by them to their stockholder members and such loans or discounts shall never exceed ten times the amount of their paid up unimpaired capital stock, and the articles of incorporation shall so provide.

[Acts 1925, S.B. 84.]

**Art. 2511. Articles of Incorporation**

In addition to the requirements prescribed by the general corporation law, the articles of incorporation shall provide: That loans shall not be obtained for, made to, or notes purchased of, or discount for any person or association other than a stockholder in such association; and that each applicant for a loan or discount by such association shall become a subscriber to its capital stock in an amount equal to ten per cent of the amount of the loan or discount applied for, to be fully paid for on or before the closing of such loan or granting of such discount. A filing fee of ten dollars shall accompany said articles of incorporation and be paid to the Secretary of State.

[Acts 1925, S.B. 84.]

**Art. 2512. Fees and Reports**

Each such association, except those having a capital stock, shall pay an annual license fee of ten dollars, and all such associations shall be exempt from all franchise or other license tax. On or before the tenth days of January, April, July and October, those having a capital stock shall file with the Secretary of State with a fee of two dollars and fifty cents, accurate reports showing their financial condition and the amount of outstanding paid up capital stock as of the first of January, April, July and October.

[Acts 1925, S.B. 84.]

**Art. 2513. Retirement of Stock**

Whenever the debts and liabilities of such association are less than fifty per cent of its assets, and in the judgment of the directors the same may be done without impairment of the financial condition of such association, said board may authorize the buying in and purchase of its capital stock at the book value thereof as it may conclusively determine, and pay for it in cash within one year thereafter; provided the board may in its discretion retire pro rata such stock held by any member or group of members whose loans have been paid in whole or in part.

[Acts 1925, S.B. 84.]

**5. FARMERS' CO-OPERATIVE SOCIETY****Art. 2514. May Incorporate**

Private corporations may hereafter be incorporated for the purpose of enabling those engaged in agricultural pursuits to co-operate with each other for the purposes named in this subdivision. Only those engaged in agricultural pursuits can become incorporators of, or members of societies chartered under this law. Each corporation chartered hereunder shall contain as a part of its name these words, "Farmers' Co-operative Society". Persons not engaged in agricultural pursuits may be permitted to contribute an amount not in excess of one-third the outstanding working capital of the society.

[Acts 1925, S.B. 84.]

**Art. 2515. Purely Local**

Corporations chartered hereunder shall be purely local in their character, shall confine their activities, business operations and membership to the community in which they are located, and in no event to extend beyond the territory surrounding the town, village or city designated as the place of business of the corporation. No public funds appropriated to any department of State government, or to any State institution shall be used in organizing any society or corporation mentioned in this subdivision. Corporations incorporated under this law may join with other corporations incorporated under this Act in establishing and maintaining joint agencies for the accomplishment of the purposes for which they are incorporated.

[Acts 1925, S.B. 84.]

**Art. 2516. Laws Governing**

Those desiring to form corporations hereunder shall, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file their charters under the general corporation laws of this State, which said corporation laws shall govern them except where in conflict with the provisions of this subdivision.

[Acts 1925, S.B. 84.]

**Art. 2517. Filing and Recording Charter**

The Secretary of State shall charge for filing charters and amendments to charters of corporations incorporated hereunder the sum of ten dollars for each charter and amendment thereof. Charters, amendments to charters and by-laws must be filed in the office of the Secretary of State and must before being filed, first be approved by the Attorney General. Copies of the charter and by-laws properly certified to by the Secretary of State shall also be filed in the office of the county clerk of the county in which it is located any society which is incorporated hereunder, but need not be recorded by the county clerk, but shall be kept by him subject to inspection of any person interested. The Secretary of State shall, in furnishing the corporation certified copies of charters, amendments and by-laws, furnish to the society two certified copies of each, one for the files of the society, and one to be filed in the office of the county clerk.

[Acts 1925, S.B. 84.]

**Art. 2518. Statement to be Made**

Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as the Attorney General may prepare for the Secretary of State. Such societies may, by their directors, in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the society in proportion to their re-

spective contributions in cash to the working capital of the corporation and patronage of their members.

[Acts 1925, S.B. 84.]

#### Art. 2519. Assets

Corporations chartered hereunder shall have property of not less than five hundred dollars in value, which may be cash, property or note[s] acceptable to the board of directors. No membership certificates shall be issued for subscriptions in the form of notes until such notes have been paid in full, principal and interest, and the holders of membership certificates for which cash or property has not been paid, while entitled to vote in the management of the affairs of the corporation, shall not be entitled to share in its dividends nor in a distribution of any assets until such notes are paid in full. However, they may become borrowers from the corporation under the provisions of this subdivision and the by-laws adopted hereunder. Such notes shall be construed to be valid subscription contracts, and shall be the property of the corporations chartered hereunder for any and all purposes.

[Acts 1925, S.B. 84.]

#### Art. 2520. Authority

Corporations chartered under this law shall have authority to borrow money and discount notes to an aggregate amount not in excess of five times the working capital of the corporation; such corporations shall have the right to loan their funds to members only upon such terms and security, if any, as may be provided in their by-laws; they shall also have the right to act as the co-operative selling and purchasing agents of their members only, and may for their members sell any and all agricultural products, and for their members purchase machinery and all supplies of any kind or character, including the purchase of fire, live stock, hail, cyclone and storm insurance for its members; in the event of purchasing insurance for its members, however, the corporation shall have authority to be, and shall be appointed and licensed as, the agent of the insurance companies, and the commissions so received by it shall be a part of the corporate funds of the company; they shall also have authority to own and operate such machinery and instrumentalities as may be necessary in the production, harvesting, and preparation for market of farm and ranch products.

[Acts 1925, S.B. 84.]

#### Art. 2521. Membership

Membership in societies incorporated under this law can be obtained only by election there-

to at the time of organization of the society by the organizers thereof, or by the board of directors of such society when organized under such rules and limitations as may be made in the by-laws. Members shall each have one vote only in the management of the affairs of the corporation. Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the by-laws. In case of expulsion the society shall return to the member at such time as may be fixed in its by-laws an amount equal to the money value of the amount contributed by such member to the working capital of the society.

[Acts 1925, S.B. 84.]

#### Art. 2522. Withdrawal

Membership certificates shall not be transferable, but members shall have the right of withdrawal under such rules and regulations as may be adopted by the society in its by-laws. In case of withdrawal the society may return to the member an amount equal to the money value of the amount contributed by him to the working capital of the society.

[Acts 1925, S.B. 84.]

#### Art. 2523. Liability of Members

Unless otherwise provided, the members of a corporation chartered hereunder shall not be responsible to the corporation or to its creditors, in excess of the membership shares subscribed by them, and when such shares are paid for their liability shall cease; provided that the association may, in its by-laws, make each member responsible for an additional amount equal to one hundred per cent of the shares owned by a member, payable upon assessment of the board of directors for the payment of the debts and obligations of the corporation; and may provide in like manner that members may waive their right to claim personal property exempt from seizure for debt as against debts and obligations due to the society. In all such instances such liability must be plainly provided for in the by-laws, which by-laws in this and all other instances must be signed by the member.

[Acts 1925, S.B. 84.]

#### Art. 2524. Publications

Appropriate forms of charter, charter amendments, by-laws, rules and annual reports to the members and such other forms as may be necessary to make this law effective, shall be prepared by the Attorney General and filed with the Secretary of State, who shall cause same, together with a copy of this law, to be published and distributed among the citizens of the State who may be interested.

[Acts 1925, S.B. 84.]

# TITLE 46A

## DECLARATORY JUDGMENTS

### Art. 2524-1. Uniform Declaratory Judgments Act

#### Scope

Sec. 1. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

#### Power to Construe, Etc.

Sec. 2. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a Statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, Statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

#### Before Breach

Sec. 3. A contract may be construed either before or after there has been a breach thereof.

#### Executor, Etc.

Sec. 4. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

#### Enumeration Not Exclusive

Sec. 5. The enumeration in Sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

#### Discretionary

Sec. 6. The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

#### Review

Sec. 7. All orders, judgments, and decrees under this Act may be reviewed as other orders, judgments, and decrees.

#### Supplemental Relief

Sec. 8. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a Court having jurisdiction to grant the relief. If the application be deemed sufficient, the Court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

#### Jury Trial

Sec. 9. When a proceeding under this Act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending.

#### Costs

Sec. 10. In any proceeding under this Act the Court may make such award of costs as may seem equitable and just.

#### Parties

Sec. 11. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the Statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

#### Construction

Sec. 12. This Act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.



Words Construed

Sec. 13. The word "person," wherever used in this Act, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

Provisions Severable

Sec. 14. The several Sections and provisions of this Act, except Sections 1 and 2, are hereby declared independent and severable, and the invalidity, if any, of any part or fea-

ture thereof shall not affect or render the remainder of the Act invalid or inoperative.

Uniformity of Interpretation

Sec. 15. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Short Title

Sec. 16. This Act may be cited as the Uniform Declaratory Judgments Act.

[Acts 1943, 48th Leg., p. 265, ch. 164.]

# TITLE 47

## DEPOSITORIES

Chapter	Article
1. State Depositories .....	2525
2. County Depositories .....	2544
3. City Depositories .....	2559
4. Special Depository .....	2567

### CHAPTER ONE. STATE DEPOSITORIES

#### Article

2525. Depository Board.
2526. Notice to Banks.
2527. Application for Deposits.
2528. Acceptance.
2529. Qualifications of Depositories.
2529a. Exemption of Banks From Furnishing Security for Deposits to Extent Deposits are Insured.
2529b. Pledge of Bonds of Home Owners' Loan Corporation.
2529c. Selection and Qualification of Depositories of State Agencies and Political Subdivisions.
2530. Deposit of Securities.
2530a. Deposit and Substitution of Securities; Acceptance of Certain Securities by Treasurer.
2531. Failure to Qualify.
2532. Placing Deposits.
2533. Centrally Located Depositories.
2534. Withdrawals.
2535. Remittances.
2536. Repealed.
2537. Cancellation of Contracts.
2538 to 2543. Repealed.
2543a. Investment of Funds by State Depository Board.
2543b. Defense Bonds and Other United States Obligations; Investment of Bond Proceeds by State.
2543b-1. Funds Accumulated But Not Usable Because of Labor and Material Shortages; Investment in United States Obligations.
2543c. Repealed.
2543d. Disposition of Interest on Time Deposits.

#### Art. 2525. Depository Board

The State Treasurer, as secretary, together with one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years and the Banking Commissioner, shall constitute the State Depository Board. Said Board shall have the right and the power to make and enforce such rules and regulations governing the establishment and conduct of State Depositories and the handling of funds therein as the public interest may require, not inconsistent with the provisions of the laws governing such depositories, which rules and regulations shall be in writing and entered upon the minutes of the Board. Said Board shall have the power to determine and designate the amount of state funds deposited by them in State Depositories that shall be "demand deposits" and what amount shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time or demand deposits" not to exceed

such rate as may be lawful under any Act of Congress and such rules and regulations as may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Whenever the word "treasurer" is used in the statutes it shall mean the State Treasurer, and the word "Board" shall mean the State Depository Board.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45 Leg. p. 319, ch. 164, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 7.]

#### Art. 2526. Notice to Banks

The Treasurer on the second Tuesday in September of each odd numbered year shall mail to each private, State, and National Bank doing business in this state, a circular letter, stating the conditions to be complied with by applicants for designation as a state depository. The Treasurer shall keep on file in his office for the inspection of any person desiring to see the same a list of the banks to which letters have been sent. Designation of depositories shall be for a period of two years' time. If it develops that more depositories are required at any time, the Board may send out notices to all private, State, and National Banks notifying them that further application for funds for the unexpired term will be accepted, or additional funds allotted to existing depositories upon application therefor. Said additional depositories shall comply with the same rules and conditions regarding all other depositories.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1943, 48th Leg., p. 422, ch. 288, § 1; Acts 1971, 62nd Leg., p. 3057, ch. 1017, § 1, eff. June 15, 1971].

#### Art. 2527. Application for Deposits

The application of the bank applying for State funds shall state its amount of paid up capital stock and permanent surplus, or in the instance of a private bank, the amount of net proprietorship, and the maximum of State funds it will accept, accompanying same with a statement of the Bank's condition at the date of said application. Such application shall contain a provision that the books and ac-

counts of such bank, if designated as a State Depository, shall be open at all times to the inspection of the Board, any member or any accredited representative thereof. All such applications shall be mailed to the Treasurer at Austin in time to reach his office on or before noon of the fifteenth day of October next succeeding. Applications received after said date may be considered at the option of the Board. [Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1971, 62nd Leg., p. 3057, ch. 1017, § 2, eff. June 15, 1971.]

#### Art. 2528. Acceptance

When the Treasurer receives such application, he shall endorse thereupon the date of its receipt, and shall in November prepare three (3) lists giving the names of all applicants for funds and the amount applied for. One list shall be furnished each member of the Board. The Board shall meet on the first Monday in November thereafter, and consider said applications, giving approval to those applicants that are acceptable, and having the power to reject those whose management or condition, in the opinion of the Board, does not warrant the placing of State funds in their possession. Any private, State, or National Bank doing business in this state may be accepted. No application for State funds shall be granted to any bank whose liabilities for borrowed money are in excess of its capital stock, but the Board may in its discretion, waive this provision.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1971, 62nd Leg., p. 3058, ch. 1017, § 3, eff. June 15, 1971.]

#### Art. 2529. Qualifications of Depositories

As soon as practicable after the Board shall have passed upon said applications, the Treasurer shall notify all banks whose applications have been accepted, of their designation as State Depositories of state funds. The Treasurer shall require each bank so designated to qualify as a State Depository on or before the 25th day of November next, by (a) depositing a depository bond signed by some surety company authorized to do business in Texas, in an amount equal to not less than double the amount of state funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the following kinds: bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this state; bonds and other obligations issued by The University of Texas; warrants drawn on the State Treasury against the General Revenue of the state; bonds issued by the Federal Farm Mortgage Corporation, provided both principal and interest of said bonds are guaranteed by the United States government; shares or share accounts of any building and loan association organized under

the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings and Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings and Loan Insurance Corporation; Home Owners Loan Corporation Bonds, provided both principal and interest of said bonds are guaranteed by the United States government, and such securities shall be accepted by the Board in an amount not less than five per cent (5%) greater than the amount of state funds which they secure; provided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of state funds allotted, provided such State Relief Bonds have all unmatured coupons attached; bonds of counties located in Texas; road districts of counties in Texas; independent and common school districts located in Texas; bonds of any hospital district created under the laws of this state; tax bonds issued by municipal corporations in Texas; and bonds issued by a municipal corporation where the payment of such bonds is secured by a pledge of the net revenues of a utility system or systems (limited to those utility systems now authorized to be encumbered under the provisions of Articles 1111-1118a, Revised Civil Statutes, as amended, inclusive). All of such securities may be accepted by the Board, provided the aggregate amount thereof is not less than twenty per cent (20%) greater than the total amount of state funds that they secure; provided that the amount of all bonds and other obligations offered as collateral shall be determined by the Board on the basis of either their par or market value, whichever is less. The term "market value" as used herein shall mean the fair and reasonable prevailing price at which said bonds are being sold on the open market at the time of the appraisal of the securities by the Board; and the action of the Board in fixing the valuation of said bonds shall be final, and not subject to review.

No state, county, road district bond, independent or common school district or municipal bonds, bonds of any hospital district created under the laws of this state, or obligations of the Board of Regents of the University issued by The University of Texas, shall be accepted as collateral security unless they shall be approved by the Attorney General. All bonds accepted as collateral security shall be registered under the same rules and regulations as are required for bonds in which the Permanent School Funds are invested. Subject to the approval of the Board, a state depository may secure its deposits of state funds in part by an acceptable surety bond and in part by acceptable collateral of the kind herein mentioned, and any losses sustained where a depository has secured its deposits in part by collateral and in part by a surety bond, the loss may be enforced against either the collateral security or the surety bond. No warrant drawn on the State

Treasury shall be accepted as collateral unless said warrants are accompanied by affidavits, sworn to by some officer of the bank offering said warrants, which said affidavits shall affirm that none of the warrants offered as collateral security were transferred or assigned by the original payees of said warrants, or any of them, for a less consideration than ninety-eight per cent (98%) of the face value of said warrants, and that none of such warrants were obtained from the original payee by loaning money thereon at a rate of interest greater than eight per cent (8%) per annum. The Board shall have the power to reject any and all collateral or surety bonds tendered by a state depository, without assigning any reason therefor, and its action in so doing shall be final and not subject to review. Notwithstanding the foregoing provisions requiring security for state funds deposited in state depositories in the form of surety bond or collateral, security for such deposits shall not be required to the extent that said deposits are insured by the Federal Deposit Insurance Corporation under the provisions of Section 12b of the Federal Reserve Act as amended,<sup>1</sup> or as the same may hereafter be amended.

In the event the market value of the securities pledged by any depository shall decrease to the point where the collateral value of said securities, as fixed by the Board, is less than the amount of said funds on deposit in said depository, the Board shall require additional security in order to equalize such depreciation.

When the collateral pledged by a state depository to secure a deposit of state funds shall be in excess of the amount required under the provisions of this Act, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security, as provided for in this Act, shall be deposited and maintained by such depository bank.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1929, 41st Leg., p. 278, ch. 124; Acts 1933, 43rd Leg., p. 840, ch. 240; Acts 1933, 43rd Leg., p. 854, ch. 244; Acts 1934, 43rd Leg., 1st C.S., p. 215, ch. 80, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 133, ch. 63, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1939, 46th Leg., p. 255, § 1; Acts 1943, 48th Leg., p. 63, ch. 55, § 1; Acts 1955, 54th Leg., p. 1132, ch. 425, § 1; Acts 1967, 60th Leg., p. 1991, ch. 738, § 1, eff. June 18, 1967.]

<sup>1</sup> 12 U.S.C.A. § 1811.

#### Art. 2529a. Exemption of Banks From Furnishing Security for Deposits to Extent Deposits are Insured

Notwithstanding any provision of law of this State or of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal

Reserve Act, as amended,<sup>1</sup> or any amendments thereto.

[Acts 1935, 44th Leg., p. 442, ch. 180, § 1.]

<sup>1</sup> 12 U.S.C.A. § 1811.

#### Art. 2529b. Pledge of Bonds of Home Owners' Loan Corporation

From and after the effective date of this Act, all bonds of the Home Owners' Loan Corporation which are guaranteed both as to principal and interest by the United States Government may be pledged in lieu of personal bonds or surety bonds as security for public funds on deposit in any depository which is now authorized by law to pledge securities in lieu of personal or surety bonds. Provided that the provisions of this Act shall be cumulative and in addition to all existing laws relating to depository bonds.

[Acts 1935, 44th Leg., p. 741, ch. 322, § 1.]

#### Art. 2529c. Selection and Qualification of Depositories of State Agencies and Political Subdivisions

Sec. 1. The selection and qualification of depositories for the deposit of public funds of all agencies and political subdivisions of the state shall be in accord with the laws now in effect and hereinafter enacted pertaining thereto.

Sec. 2. The fact that an employee or officer of a state agency or political subdivision, who is not charged with the duty of selecting the depository thereof, is an officer, director or stockholder of a bank shall not disqualify said bank from serving as the depository of said state agency or subdivision.

A bank shall not be disqualified from bidding and becoming the depository for any agency or political subdivision of the state by reason of having one or more officers, directors or stockholders of said bank who individually or collectively own or have a beneficial interest in not more than 10 percent of the bank's outstanding capital stock, and at the same time serves as a member of the board, commission, or other body charged by law with the duty of selecting the depository of such state agency or political subdivision; provided, however, that said bank must be selected as the depository by a majority vote of the members of the board, commission, or other body of such agency or political subdivision and no member thereof who is an officer, director or stockholder of the bank shall vote or participate in the proceedings. Common-law rules in conflict with the terms and provisions of this Act are hereby modified as herein provided, but this Act shall never be deemed to alter, change, amend or supersede the provisions of any home-rule city charter which is in conflict herewith.

[Acts 1967, 60th Leg., p. 370, ch. 179, eff. May 12, 1967.]

#### Art. 2530. Deposit of Securities

In the event the State Depository, as designated in the preceding Article, shall elect to

deposit said pledged securities, above mentioned, with the State Treasurer, the said securities shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury. Provided, however, that such bank so designated as depository shall have the option, instead of depositing said pledged securities with the State Treasurer, of depositing same with another State or National Bank situated in the State, subject to the approval of the Board; said securities to be held in trust by said custodian bank to secure funds deposited by the State Treasurer in the depository bank. Upon the receipt of said securities, said custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said securities pledged to the State Treasurer. The security evidenced by such trust receipts shall be subject to inspection by the Board or its agents at any time deemed advisable by said Board. Said custodian bank shall have a capital stock and permanent surplus of not less than Five Hundred Thousand (\$500,000.00) Dollars, and said bank designated as depository shall itself defray the charges, if any, of such custodian bank for accepting and holding said securities.

Subject to the approval of the Board, a State Depository may have the right to substitute one group of securities for another group of securities pledged with the State Treasurer, when and as such State Depository may desire to make such substitution, so long as the securities desired to be substituted by such bank shall come within the classification of securities acceptable under the terms of this Act.

If, in any case, or at any time, such bonds or other securities are not satisfactory security, in the opinion of the Board, for the deposits made under this Act, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time inspect such bonds and see that the same are actually kept in the vaults of the State Treasury and in said custodian banks. In the event that any State Depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities were secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this Act may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided.

Upon request of the owner or owners, the Treasurer or custodian bank may surrender interest coupons or other evidence of interest when due on securities deposited by depository banks, provided, said securities are ample to meet the requirements of the State.

Whenever any private bank now organized as provided for by the private banking laws of Texas should seek to become a depository for State funds or any other governmental agency, it shall agree in writing to submit itself to examination as to its solvency.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 63, ch. 33; Acts 1934, 43rd Leg., 2nd C.S., p. 133, ch. 63, § 2; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### **Art. 2530a. Deposit and Substitution of Securities; Acceptance of Certain Securities by Treasurer**

In the deposit and exchange or substitution of securities by state depository banks under the provisions of Chapter 1, Title 47, Revised Civil Statutes of Texas, 1925, as amended, the State Depository Board may authorize the State Treasurer to accept such securities offered for deposit and those securities offered for exchange of securities already on deposit without further action of said Board where such offered securities are bonds and certificates and other evidences of indebtedness of the United States and all other bonds which are guaranteed as to both principal and interest by the United States.

[Acts 1953, 53rd Leg., p. 754, ch. 302, § 1.]

#### **Art. 2531. Failure to Qualify**

In case any bank that has submitted an application for State funds shall fail to qualify within the time specified in this Act after being notified to do so, it shall forfeit its right to act as a depository for a period of one year, at the option of the Board.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### **Art. 2532. Placing Deposits**

After the depositories have qualified as provided in the preceding articles, it shall be the duty of the Treasurer to deposit the funds belonging to the State in such depositories, as far as practical on a fair percentage basis, and shall at all times keep such funds equitably prorated in proportion to the amount which each is entitled to receive by drawing warrants alternately thereon, or by apportioning the warrants so drawn, and after giving the notice required for the withdrawal of funds deposited to the credit of any "time deposits" in any State Depository or Depositories.

No depositories shall be entitled to keep on deposit State funds in an amount in excess of their paid up capital stock and permanent surplus. Any reduction in the capital stock and permanent surplus of any depository shall reduce correspondingly the amount of State funds which it can retain as a depository, and the Treasurer is authorized to withdraw from said depository any funds in excess of its capital and permanent surplus, provided, that where any depository shall pledge as security for State funds on deposit with it warrants drawn upon the State Treasury against the General Fund of this State as provided by Article 2529, and shall also make the proof re-

quired in such Article that such warrants were acquired by it as therein provided, then the limitation upon the amount of deposits that may be placed in said depository shall not apply, but the amount of said funds to be deposited in said depository shall be determined by the State Depository Board.

If there be a surplus after the awards are made, the surplus shall be prorated among the applying banks.

Such provisions, however, shall not affect arrangements for clearing checks made by said Board with State Depositories as hereinafter provided.

All State Depositories shall collect all checks, drafts and demands for money so deposited with them by the Treasurer and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the Depository Bank, provided, that any expense incurred in collection thereof by the Depository which the Depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the State Treasurer out of any moneys appropriated by the Legislature for that purpose.

If there should be at any time a surplus of State funds above the aggregate amount applied for by and allotted to State Depositories, the Treasurer, with the approval of the Board, is hereby authorized to deposit said surplus funds in the vaults of the State Treasury, or the Board shall have the power to deposit said surplus, or any part thereof with any one or more banks in such amounts and for such periods as it may deem advisable, and any bank receiving such deposits under this Article shall execute a bond or furnish collateral in the manner and form provided in Article 2529 under the conditions provided in said Article.

The State Depositories shall show in their statements, published according to law, the amount of State funds on deposit with them.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### Art. 2533. Centrally Located Depositories

The Board shall designate one or more banks which have been selected as State Depositories in centrally located cities to be used for clearing checks and other obligations due the State, and the Treasurer shall keep sufficient moneys on deposit in the "demand deposits" account in said Depositories to meet all current claims upon the State, and all items received by the Treasurer for collection shall be deposited with such Depositories to be credited to the "demand deposits" account in said banks, and all checks drawn by the Treasurer for the payment of obligations due by the State may be drawn on such accounts in such Depositories or on

the "demand deposits" account in other State Depositories so that the checks of the State may at all times pass current as cash.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### Art. 2534. Withdrawals

The funds on deposit with depositories shall be subject to withdrawal at any time by the Treasurer, except funds designated by the Board as "time deposits" which shall be withdrawn in the manner agreed upon in the contract under which such funds have been deposited.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### Art. 2535. Remittances

All State Depositories shall remit free of charge, except such charges which depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, to the Treasurer on his demand, all withdrawals of State funds as provided for in the preceding Article. All remittances to the Treasurer made by the State Depositories, or any person or persons may be in cash by registered and insured letter; by post office money order; express money order of any company authorized to do business in Texas, or by any bank draft on any bank in the following cities: Dallas, Fort Worth, Waco, Houston, Austin, Galveston and San Antonio. The liability of any State Depository or person sending the same shall not cease until the said money is actually received by the Treasurer. Any depository that refuses to remit for State items, or Treasury drafts, as above indicated, shall upon order of the Board forfeit its right to receive further deposits, and the Board shall have the right to withdraw all funds from said bank, which shall thereafter cease to be a State Depository.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

#### Art. 2536. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 2

#### Art. 2537. Cancellation of Contracts

Each State Depository shall have the right to cancel its depository contract upon accounting to the Treasurer for all funds deposited with it at any time by giving thirty days' notice in advance.

The Board shall have the right to terminate a contract with the depository at any time they deem it to the interest of the state to do so, upon giving the depository fifteen days' notice of such termination. The Treasurer shall discontinue making deposits in any bank when in the opinion of the Board the condition or management of the bank warrants such action on his part.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1943, 48th Leg., p. 422, ch. 288, § 1.]

**Art. 2538. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1**

**Art. 2539. Repealed by Acts 1937, 45th Leg., p. 319, ch. 164, § 3**

**Arts. 2540 to 2543. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 2**

**Art. 2543a. Investment of Funds by State Depository Board**

The State Depository Board is hereby authorized and empowered to invest the permanent funds of the Texas School for the Blind, Texas School for the Deaf, Austin State Hospital, State Orphans' Home and any other permanent funds the investment of which is not otherwise provided for, whenever such permanent funds shall have as much as One Thousand Dollars (\$1000) of funds on deposit with the State Treasurer which are not invested, and it is hereby made the duty of the State Depository Board to invest such funds in the same class of bonds as are authorized for investment of the Permanent School Fund.

[Acts 1931, 42nd Leg., p. 386, ch. 231, § 1.]

**Art. 2543b. Defense Bonds and Other United States Obligations; Investment of Bond Proceeds by State**

Where the State of Texas has heretofore or hereafter accumulated funds for certain purposes and is unable to obtain labor or materials to carry out such purposes, such funds may be invested in defense bonds or other obligations of the United States of America; provided, however, that when war time or any other regulations shall permit the state to acquire the necessary labor and materials, the obligations of the United States in which said funds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the funds were originally authorized or collected.

[Acts 1943, 48th Leg., p. 211, ch. 131, § 1.]

**Art. 2543b-1. Funds Accumulated But Not Usable Because of Labor and Material Shortages; Investment in United States Obligations**

Where the State of Texas has heretofore or hereafter accumulated funds for certain purposes and is unable to obtain labor or materials to carry out such purposes, such funds may be invested in government bonds or other obligations of the United States of America; provided, however, that when other regulations shall permit the State to acquire the necessary labor and materials, the obligations of the United States in which said funds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the funds were originally authorized and collected.

[Acts 1947, 50th Leg., p. 388, ch. 216, § 1.]

**Art. 2543c. Repealed by Acts 1971, 62nd Leg., p. 3319, ch. 1024, art. 1, § 3, eff. Sept. 1, 1971**

See, now, Education Code, § 51.008.

**Art. 2543d. Disposition of Interest on Time Deposits**

Sec. 1. Interest received on account of time deposits of moneys in funds and accounts in the charge of the State Treasurer shall be allocated as follows: To each constitutional fund there shall be credited the pro rata portion of the interest received due to such fund. The remainder of the interest received, with the exception of that portion required by other statutes to be credited on a pro rata basis to protested tax payments, shall be credited to the General Revenue Fund. The interest received shall be allocated on a monthly basis.

Sec. 2. Whenever a deficit occurs in the General Revenue Fund, the State Treasurer may place with any designated depository bank an offsetting compensating balance in a special depository account known as "Special Demand Account Secured by General Revenue Warrants Only."

Sec. 3. As to the proper interpretation and application of this Article, the State Treasurer is entitled to rely upon the opinion and advice of the Attorney General.

[Acts 1969, 61st Leg., p. 2703, ch. 885, § 1, eff. June 21, 1969.]

**CHAPTER TWO. COUNTY DEPOSITORIES**

**Article**

- 2544. Notice to Banks.
- 2545. Application by Banks.
- 2546. Selecting County Depository.
- 2546a. Political Subdivisions; Designation of Outstate Depository; Prohibition.
- 2547. Bonds.
- 2548. Additional Bond.
- 2548a. Pledge of State General Fund Warrants as Security for Deposited Funds of County or School District in Lieu of Bonds.
- 2549. Designating Depository.
- 2550. Deposits Not Applied For.
- 2551. Clearing House to be Selected.
- 2552. Checks Payable at County Seat.
- 2553. Depository Not Located at County Seat.
- 2554. Warrants, How Paid and Charged.
- 2555. May Select at Subsequent Term.
- 2556. New Bond May be Required.
- 2557. Liability of Treasurer.
- 2558. Applications From Adjoining Counties.
- 2558a. Depositories for Trust Funds in Hands of County and District Clerks.

**Art. 2544. Notice to Banks**

The Commissioners Court of each county is hereby authorized and required at the February Regular Term thereof next following each general election to enter into a contract with any banking corporation, association or individual banker in such county for the depositing of the public funds of such county in such bank or banks. Notice that such contracts will be made by the Commissioners Court shall be published by and over the name of the County Judge, once each week for at least twenty

(20) days before the commencement of such term in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the courthouse door of said county.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2545. Application by Banks

Any banking corporation, association or individual banker in such county desiring to be designated as county depository shall make and deliver to the County Judge an application applying for such funds and said application shall state the amount of paid up capital stock and permanent surplus of said bank and there shall be furnished with said application a statement showing the financial condition of said bank at the date of said application which shall be delivered to the County Judge on or before the first day of the term of the Commissioners Court at which the selection of the depositories is to be made. Said application shall also be accompanied by a certified check for not less than one-half of one per cent of the county's revenue for the preceding year as a guarantee of the good faith on the part of said bank, and that if said bank is accepted, as county depository, that it will enter into the bond hereinafter provided. Upon the failure of the banking corporation, association, or individual banker in such county that may be selected as depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages and the county judge shall readvertise for applications, if necessary, to obtain a county depository for said county.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1292, ch. 484, § 1.]

#### Art. 2546. Selecting County Depository

It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which banks are to be selected as county depositories, to consider all applications filed with the County Judge, cause such applications to be entered upon the minutes of the Court and to select those applicants that are acceptable and who offer the most favorable terms and conditions for the handling of such funds and having the power to reject those whose management or condition, in the opinion of the Court, does not warrant placing of county funds in their possession. The County Commissioners Court shall have the power to determine and designate the character and amount of county funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of the Congress of the United States and any rule or regulations that may be promulgated by

the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. When the selection of a depository or depositories has been made, the checks of those applicants which have been rejected shall be immediately returned. The check or checks of the applicant or applicants whose applications are accepted shall be returned when said depository or depositories enter into and file the bond required by law and said bond has been approved by the Commissioners Court and the State Comptroller, and not until such bond is filed and approved. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2546a. Political Subdivisions; Designation of Outstate Depository; Prohibition

No governing body of a political subdivision of the State of Texas, including counties, municipalities, school districts, and other districts, may designate a financial institution located outside the State as a depository for funds under its jurisdiction; however, any institution selected as a paying agent for specific bonds or obligations shall not be considered a depository as set forth herein.

[Acts 1971, 62nd Leg., p. 1240, ch. 305, eff. May 24, 1971.]

#### Art. 2547. Bonds

Within fifteen (15) days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as county depository in one or more of the following ways, at the option of the Commissioners' Court:

(a) By executing and filing with the Commissioners' Court, a bond or bonds, payable to the County Judge and his successors in office, to be approved by both the Commissioners' Court and the Comptroller, and immediately thereafter filed in the office of the County Clerk of said county, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and laws of this State, of a value equal to, or in excess of, the amount of said bonds where there is more than one bond; said bond or bonds to be in an amount equal to the estimated highest daily balance of such county, as determined by the Commissioners' Court, such estimated daily balance to be in no event less than seventy-five (75%) per cent of the highest daily balance of said county for the next preceding year, less the amount of bond funds received and expended; provided, however, in



the event that county funds derived from the sale of county securities during the term of such bond are deposited, such Commissioners' Court shall require additional bond and/or bonds, and/or pledge of securities equal to the amount of such additional county funds. The sureties shall file with the Commissioners' Court at the time of filing said bond or bonds, a statement containing a description of the unencumbered and non-exempt lands owned by them, sufficient to identify such lands on the ground, and such statement shall remain on file with the County Clerk and attached to such bond or bonds; and such statement shall contain a value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by both the Commissioners' Court and the Comptroller, and filed in the office of the County Clerk of said county. Provided, however, such surety company or companies may be relieved of its or their obligation on thirty (30) days notice in writing to the Commissioners' Court, such bonding surety company or companies not to be relieved of any liability for loss sustained by the county prior to the expiration date of such bonds or bond; and provided further, in the event any surety company or companies shall ask to be relieved of such bond or bonds, such depository shall, previous to the termination date of such obligation of such surety company or companies, present further security acceptable to the County Commissioners' Court and the Comptroller, and filed in the office of the County Clerk of said county, for the securing of county funds in accordance with the provisions of this Act.

(c) In lieu of such personal bonds or surety bonds as above specified, said banking corporation, association or individual banker so selected as county depository, may pledge, and said depository bank is authorized to pledge with the Commissioners' Court for the purpose of securing such county funds, securities of the following kind, in an amount equal to the amount of such county funds on deposit in said depository bank, to-wit: bonds and notes of the United States, securities of indebtedness of the United States, and other evidences of indebtedness of the United States, when said evidences of indebtedness are supported by the full faith and credit of the United States of America, and other bonds or other evidences of indebtedness which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district, or bonds issued under the Federal Farm Loan Act,<sup>1</sup> or road district bonds, bonds, pledges or other securities issued by the Board of Regents of the Uni-

versity of Texas, bank acceptances of banks having a capital stock of not less than Five Hundred Thousand (\$500,000.00) Dollars, notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government, shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; and bonds issued by municipal corporations in Texas, all said securities having a total market value equal to the amount of the depository bond; an amount of the following described securities not to exceed twenty-five (25%) per cent of the assessed value of the property in the county as shown by the certified tax roll for the preceding year, viz.: closed first mortgages on improved and unencumbered real estate situated in the State of Texas, provided such security so offered must be first approved by the Commissioners' Court; and before approving such a mortgage tendered as security for deposits, the Commissioners' Court shall require a written opinion by an attorney selected by the Court, showing that the lien so offered is superior to any and all other claims or rights in the property, and the Court shall also require that the improvements on each tract of real estate described in such mortgage be fully insured in some Stock Fire Insurance Company, or a Mutual Fire Insurance Company having One Hundred Thousand (\$100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, to be approved by the County Judge, with loss payable clause in favor of the County Judge, such mortgage as may be approved as acceptable security under the provisions of this Article shall be assigned to the County Judge by written instrument, duly acknowledged, and the same shall be placed of record forthwith in each county where any part of said real estate is situated; and as security for such deposits, unencumbered, improved real estate, subject to approval of Commissioners' Court, may be pledged directly by Deed of Trust executed to a trustee selected by the Commissioners' Court, with the County Judge as beneficiary; provided that the Court shall first require the written opinion of an attorney selected by the Court, showing that the lien offered as security for deposits is superior to any and all other claims or rights in the property; and provided further that the Court shall require that all improvements on any real estate, so pledged, be fully insured in a Stock Fire Insurance Company or a Mutual Fire Insurance Company having One Hundred Thousand (\$100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, approved by the County Judge, with loss payable clause in favor of the County Judge; and the

Commissioners' Court shall investigate all real estate security and determine the value at which such real estate security as is herein described shall be accepted; provided that in no event shall such security be accepted as collateral at a value in excess of fifty (50%) per cent of the reasonable market value of the real property covered by such mortgages, except where such mortgages are insured or guaranteed by the Federal Housing Administrator of the United States; and such real estate security as herein described may be withdrawn and replaced by other real estate securities meeting the requirements of this Act, or any class of securities above enumerated, provided all such withdrawals, substitutions and replacements must be approved by the Commissioners' Court; and the County Judge shall execute such instruments as may be necessary to transfer to the depository or its order, all liens, so withdrawn, and said Commissioners' Court may accept said securities in lieu of such personal or surety bonds; and such securities so pledged by such depository bank shall be deposited as the Commissioners' Court may direct.

When the securities pledged by a depository bank to secure county funds shall be in excess of the amount required under the provisions of this Article, the Commissioners' Court shall permit the release of such excess; and when the county funds deposited with said depository bank shall for any reason, increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the Commissioners' Court so that the securities pledged shall at no time be less than the total amount of county funds on deposit in said depository bank. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the Commissioners' Court. Upon the request of such depository bank, the Commissioners' Court shall surrender interest coupons or other evidence of interest, when due, on securities deposited with the Commissioners' Court by such depository bank, provided said securities remaining pledged are ample to meet the requirements of said Commissioners' Court. Such depository may secure said funds by one or more of the ways herein provided, at the option of the Commissioners' Court.

The condition of the personal bond or bonds, or contract for securities pledged, as herein above provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in any depository by the county treasurer of the county, and all checks drawn upon any "time deposit" account, upon presentation, after the expiration of the period of notice required in the case of "time deposits"; and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried

in the county for which such depository is selected; and provided further, that upon reasonable notice to the Commissioners' Court, such county depository may change from time to time its method of securing such funds, so long as the same are at all times secured in the amount and manner specified herein.

Where separate bonds are given to secure county funds, each surety thereunder shall be liable only for such part of any loss sustained by failure of the depository, as the amount of each bond shall bear to the aggregate amount of all bonds and/or securities held by the county for protection of the funds covered by said bonds.

In the event of payment of a loss to the county by personal sureties or surety companies, said sureties shall be subrogated by the county in the amounts such payment bears to the deposit secured by them or it, at the time of default of the depository.

It shall be the duty of the Commissioners' Court to investigate and inquire into the solvency of each and every surety, on any personal bond or bonds so filed by such county depository, and accepted by the Commissioners' Court and approved as required by law, at least twice during each and every year such bonds are effective and in force; and for that purpose shall have authority to require each surety to render an itemized and verified financial statement, under oath, showing his true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any such events, the Commissioners' Court shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof; and if the statements provided for herein shall indicate that any of such lands have been disposed of or encumbered, and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said Commissioners' Court shall require a new bond, meeting fully the requirements of this law. The Commissioners' Court shall at any time it may deem necessary for the protection of the county, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such Commissioners' Court may request any such depository if it deem advisable, to execute a new bond. If said new bond required by the Commissioners' Court for any reason as herein specified be not filed within five (5) days from the time of the service of a copy of

said order upon said depository, the Commissioners' Court may proceed to the selection of another depository, in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in this law shall in any manner limit, restrict or prevent the Commissioners' Court from requiring any depository to execute a new bond at any time such Commissioners' Court may deem it necessary for the protection of the county.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 197, ch. 129; Acts 1929, 41st Leg., p. 33, ch. 11; Acts 1933, 43rd Leg., p. 40, ch. 19; Acts 1933, 43rd Leg., p. 137, ch. 66; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1; Acts 1943, 48th Leg., p. 70, ch. 58, § 1.]

<sup>1</sup> 12 U.S.C.A. § 641 et seq. (repealed. See, now, 23 U.S.C.A. § 2001 et seq.).

#### Art. 2548. Additional Bond

Whenever, after the creation of a county depository, as by this Act provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the Commissioners Court of such county at its first meeting after such special funds shall have come into the Treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such funds remain in such depository. Such extra or special bond may be cancelled and a new bond contemporaneously substituted therefor as such special fund may have been reduced. Such special bond shall at all times be sufficient in amount to cover such special fund then on hand. Upon the failure of such depository to furnish such additional bond within thirty (30) days from the date of such demand, the Commissioners Court may cause such special funds to be withdrawn, upon the draft of the county treasurer from such depository, and cause the same to be deposited in some solvent National bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such National bank or State bank of last deposit, until such time that such county depository may have filed with the Commissioners Court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository. The requiring of such additional or special bond shall be optional with such Commissioners Court. When a banking institution selected, qualified and acting as a county depository shall become insolvent and it shall become necessary to resort to the depository bond or bonds to collect the county and State funds deposited therein, payment shall be made to the county and State pro rata.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2548a. Pledge of State General Fund Warrants as Security for Deposited Funds of County or School District in Lieu of Bonds

Any banking corporation in the State of Texas selected as the depository bank for County Funds, or for the funds of any School District in Texas, including Common School Districts, Independent School Districts, Rural High School Districts, Consolidated School Districts, and any other School District in Texas, or funds of any State institution, shall be authorized to pledge General Fund Warrants of the State of Texas as securities for the purpose of securing such funds when, as otherwise provided by law, such banking corporations are authorized to pledge securities in lieu of personal bonds or surety bonds for the purpose of securing such Funds; provided, however, this privilege shall cease and be null and void whenever the deficit in the General Fund shall exceed Forty-two Million (\$42,000,000.00) Dollars.

[Acts 1941, 47th Leg., p. 100, ch. 82, § 1.]

#### Art. 2549. Designating Depository

(a) As soon as said bond be given and approved by the Commissioners Court, and the Comptroller, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be relieved of responsibility of its safekeeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States

or any regulation by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or held by any district, county or precinct officer in such county, or the officers of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law.

(b) If during a school year, a Commissioners Court having control of school district funds elects to transfer the funds from one bank serving as county depository to another bank, the school district affected may require that the Commissioners Court delay the transfer of the district's funds until the end of the school district's fiscal year or until September 1, whichever date follows nearest the date the Commissioners Court took action on the transfer.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 604, ch. 201; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1; Acts 1969, 61st Leg., p. 1048, ch. 342, § 1, eff. May 27, 1969.]

#### Art. 2550. Deposits Not Applied For

If for any reason no applications are submitted by any banking corporation, association or individual banker to act as county depository or in case all applications shall be declined, then in any such case, the Commissioners Court shall have the power, and it shall be their duty to deposit the funds of the county with any one or more banking corporations, associations or individual bankers in the county or in the adjoining counties in such amounts and for such periods as may be deemed advisable by the Court. Any bank or banking concern receiving deposits under this Article shall execute a bond in the manner and form provided for depositories of county funds with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds deposited with such bank or banking concern.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 394, ch. 152, § 1; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2551. Clearing House to be Selected

When the funds of any county shall be deposited with two or more depositories, the Commissioners Court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2552. Checks Payable at County Seat

It shall be the duty of the depository or depositories to pay, upon presentment at the county seat of the county, or in the case of "time deposits" to pay upon presentment after the expiration of the period of notice agreed upon, all checks or warrants drawn by the county treasurer upon the funds of said county deposited with said depository or depositories, as long as such funds shall be in the possession of such depository subject to such checks or warrants. For every failure to pay such check or warrant at such county seat either upon presentment in case of "demand deposits," or upon presentment after the expiration of the period of notice required in the case of "time deposits" said depository or depositories shall forfeit and pay to the holder of such check ten per cent (10%) of the amount thereof; and the Commissioners Court shall revoke the order creating such depository or depositories.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2553. Depository Not Located at County Seat

If any depository selected by the Commissioners Court be not located at the seat of such county, said Commissioners Court may in its discretion require said depository to file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid, said person to be approved by the Commissioners Court; and such depository shall cause every check to be paid upon presentation or upon presentation at the expiration of the period of notice in the case of "time deposits" at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1; Acts 1949, 51st Leg., p. 187, ch. 103, § 1.]

#### Art. 2554. Warrants, How Paid and Charged

It shall be the duty of the county treasurer upon the presentation to him of any warrant, check, voucher, or order drawn by the proper authority, if there be funds sufficient for the payment thereof on deposit in the account against which such warrant is drawn, to endorse upon the face of such instrument his order to pay the same to the payee named therein and to charge the same on his books to the fund upon which it is drawn. The county treasurer shall not make an endorsement upon any warrant, check, voucher, or order, upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired as required in the contract with said depository in designating said funds as "time deposits." It shall be the duty of such depository to make a detailed monthly statement to the Commissioners Court at each regu-

lar term of said Court showing the daily balances to the credit of each of the funds on deposit. In case any bonds, coupons, or other indebtedness of any county by the terms thereof are payable at any place other than the treasury of the county, nothing herein contained shall prevent the Commissioners Court of such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity, provided such payments shall be made in the manner prescribed by law. All checks or warrants issued or drawn by any officer under the provisions of this Act, shall be subject to all the laws and regulations providing for auditing and countersigning and all such laws and regulations are hereby continued in full force and effect.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2555. May Select at Subsequent Term

If for any reason, no selection of a depository be made at the time provided by law, the Commissioners Court may, at any subsequent time after twenty (20) days' notice, select a depository or depositories in the manner provided for such selection at the regular time; and the depository or depositories so selected shall remain the depository or depositories until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2556. New Bond May be Required

If the Commissioners Court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2557. Liability of Treasurer

The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this Act shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2558. Applications From Adjoining Counties

If there be no bank or banks situated within the county that seeks to be designated as county depository, then in that event the Commis-

sioners Court shall be authorized to advertise for applications from banks in adjoining counties or any other counties in this State in the manner provided by law of this State with reference to advertising in the counties desiring such depositories. When a depository has been selected by the Commissioners Court in the manner as provided herein, said depository shall, within five (5) days after notice of such designation and selection, file with county treasurer of such county a statement designating the place at said county seat where, and the person by whom all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 194, ch. 89; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

#### Art. 2558a. Depositories for Trust Funds in Hands of County and District Clerks

##### Applications

Sec. 1. The Commissioners Court of each county is authorized and required at the February term thereof next following each general election to receive applications from any banking corporation, association or individual banker in such county as may desire to be selected as a depository for Trust Funds in possession of the County and District Clerks. Said applications shall be filed with the County Clerk on/or before ten o'clock a. m. on the first day of the term of Court at which said applications are to be received. Said applications shall be accompanied by a certified check for not less than one-half of one per cent of the average daily balances of the amount of Trust Funds in the possession of the Clerks during the preceding calendar year which amount shall be determined by the County Clerk on/or before ten (10) days before the applications herein provided for are required to be filed, and a certified check accompanying the application as herein provided for in the amount so determined by the County Clerk shall be sufficient compliance with this provision, which certified check shall be a guarantee of the good faith on the part of the applicant, and that if his application is accepted the bond hereinafter provided for will be entered into. Upon the failure of the banking corporation, association or individual banker that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county shall select another depository as hereinafter provided. In the event any application shall not be accepted, the certified check accompanying the same shall be returned. The check of the applicant whose application is accepted shall be returned when his bond is filed and approved by the Commissioners Court and not until such bond is filed and approved. It shall not be necessary for the county to advertise or give notice that applications will be received as provided by this Statute.

##### Entry of Applications and Selection of Depository

Sec. 2. It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first

day of each term at which applications are required to be received to enter said applications on the minutes of the Court and to select a depository for the Trust Funds in the possession of County and District Clerks.

**Qualification of Depository**

Sec. 3. Within thirty (30) days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker so selected to qualify in the same manner as now provided by law for the qualification of county depositories.

**Entry of Order Designating Depository; Funds Deposited; Failure to Select New Depository**

Sec. 4. As soon as said depository has qualified as provided by law and has been approved by the Commissioners Court, said Court shall make and enter an order upon the minutes, designating such banking corporation, association, or individual banker as County Depository for Trust Funds until the designation and qualification of a successor, and thereupon it shall be the duty of the County and District Clerks of such county to deposit all Trust Funds in their possession with said depository in the manner hereinafter provided; provided, in the event, a new depository has not been selected and qualified by April 15th succeeding the term of Court at which a depository is required to be selected as required by this Act, then the term of such depository shall end and all Trust Funds due or on deposit shall be paid to the Clerk in whose name the account is carried.

**Placing Trust Funds on Time Deposit; Withdrawals; Interest**

Sec. 4a. The Commissioners Court of each county, acting by and through the County Auditor, or if there is no County Auditor then the County Treasurer, of such county, is authorized to place on time deposit with the depository bank for trust funds in the possession of County and District Clerks of such County, that portion of the trust funds account estimated by the County Auditor or County Treasurer, as the case may be, as not required immediately to pay out all amounts in accordance with proper orders of the Judge of the Court in which funds have been deposited. If at any time the funds so placed on time deposit are required before maturity, they shall be made available by the depository bank but the depository bank shall not be liable for interest earned on such amount withdrawn from time deposit. The Commissioners Court is authorized and directed to receive all interest so earned on time deposit of such trust funds and to place all such interest into the General Fund of the County as an offset to the expenses of handling such trust funds for the benefit of litigants.

**Accumulated Interest; Placing in General Fund**

Sec. 4b. The Commissioners Court of each county, acting by and through the County Auditor, or if there is no County Auditor then the County Treasurer, of such county, is authorized

to place in the proper General Fund of the county any accumulated interest derived from trust funds in the possession of County and District Clerks of such county prior to the enactment of Chapter 270, Acts of the 56th Legislature, Regular Session, 1959, to offset the expenses of handling such trust funds for the benefit of litigants.

**Advertisement for Applications under Certain Conditions**

Sec. 5. If for any reason there shall be submitted no application by any banking corporation, association or individual banker in the county, or in case there shall be no application for the entire amount of Trust Funds, or in the event all applications submitted have been rejected by the Commissioners Court, or in the event a depository selected has failed to qualify, or in the event that the depository shall become insolvent, or in the event a new depository has been selected on account of the failure of the regular depository to execute a new bond as hereinafter provided, then in either event, the Commissioners Court shall advertise for applications from any banking corporation, association, or individual banker within the State of Texas, and may select a depository, which depository shall qualify in the manner above provided. Notice of the selection of a depository as provided by this Act shall be published once each week for two (2) successive weeks in a newspaper of general circulation within the county, if there be such newspaper. If there is no newspaper published in the county, then the same shall be posted at the courthouse for said period. In the discretion of the Commissioners Court said notice may also be published in any newspaper outside of the county for the same length of time.

**Provision for Payment on Presentment of Checks; Penalty**

Sec. 6. It shall be the duty of the depository to provide for the payment at the county seat of the county upon presentment all checks drawn by the County or District Clerk upon the funds deposited in the name of such Clerk as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such checks ten per cent (10%) of the amount thereof.

**Depository Not Located at County Seat**

Sec. 7. If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the County Clerk of such county, a statement designating the place at said county seat where, and the person, firm or corporation by whom, all the deposits may be received from the Clerks for such depository, and where and by whom in said county seat all checks drawn on such depository will be paid and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of such funds applicable to their payment.

**New Bond**

Sec. 8. If the Commissioners Court shall at any time deem it necessary for the protection of the Trust Funds, it may require any depository to execute a new bond. If said new bond is not filed within fifteen days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the election of another depository in the manner provided for the selection of a depository as provided in this Act.

**County and District Clerks Not Responsible for Loss of Trust Funds Through Depository's Failure or Negligence**

Sec. 9. The County and District Clerks shall not be responsible for any loss of the Trust Funds through failure or negligence of any depository, but nothing in this Act shall release any County or District Clerk for any loss resulting from any official misconduct or negligence on his part nor from any responsibility for such Trust Funds until a depository shall be selected and the funds deposited therein nor for any misappropriation of such funds by him. Upon the deposit in the legally selected depository of the Trust Funds by any County or District Clerk, such Clerk shall thereafter be relieved of the safekeeping of said funds.

**Loss of Deposit on Account of Insolvency of Depository or Other Cause; Liability of County**

Sec. 10. In the event of the insolvency of any depository, or if for any reason, on account of the deposit of the Trust Funds with any depository, any part of said funds are lost, the county shall be liable to the person to whom any part of said Trust Funds is due for the full amount of said funds due such person.

**Duty to Deposit; Trust Fund Account**

Sec. 11. Any County or District Clerk having the custody by law of any money that may have been deposited in court to abide the result of any legal proceeding, which amount is to be in his possession for a period longer than three (3) days, shall deposit the same in the county depository for Trust Funds, if there be such a depository. The funds deposited by the Clerk shall be carried as a Trust Fund account in the name of the Clerk making the deposit, and same shall be subject to withdrawal by the Clerk under the conditions set out in the succeeding paragraph of this Act.

**Withdrawal of Deposits by Check**

Sec. 12. Except upon an order of the Judge of the Court in which funds have been deposited, no check shall be drawn on said depository for any part of said funds by the Clerk except for payment to the person or persons to whom the amount of said check is due. All checks drawn by the Clerks shall show the style and number of the proceeding in which said money was deposited with the Clerk.

**Transfer of Funds to New Depository**

Sec. 13. If at any time, a new depository has been selected and qualified, it shall be the duty of the County and District Clerks to transfer to the new depository all funds in said

depository in the name of such Clerk and for this purpose a check may be drawn on such funds by such Clerks.

**Failure to Select Depository**

Sec. 14. In the event there has been no selection of a county depository for Trust Funds, each County or District Clerk having the custody by law of any money, evidence of debt, script, instrument of writing, or other legal proceeding<sup>1</sup> shall seal up in a secure package the identical money or other article received by him and deposit the same in some iron safe or bank vault.

**Clerk's Failure to Perform Duties; Penalty**

Sec. 15. Any county or district clerk who fails to perform any duty required by this Act, or shall do or perform any act prohibited by the provisions of this Act shall be punished by fine of not exceeding Five Thousand Dollars (\$5,000.00), or by imprisonment in jail not exceeding two years, or by both such fine and imprisonment, and in addition thereto may be punished for contempt.

[Acts 1930, 41st Leg., 4th C.S., p. 21, ch. 14; Acts 1937, 45th Leg., p. 1298, ch. 484, § 2; Acts 1959, 56th Leg., p. 586, ch. 270, § 1; Acts 1969, 61st Leg., p. 1961, ch. 660, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Probably should read "or other article that may have been deposited in court to abide the result of any legal proceeding" as prior to amendment of 1937.

**CHAPTER THREE. CITY DEPOSITORIES**

**Article**

- 2559. Council to Take Applications for Depository.
- 2560. Award and Bond.
- 2561. Designating Depository, etc.
- 2562. Warrants and Checks Paid.
- 2563. May Select at Subsequent Meeting.
- 2564. Liability of Treasurer.
- 2565. Restrictions Upon Drawing.
- 2566. Definitions of Terms.
- 2566a. Security for Deposits Not Required to Extent Covered by Federal Deposit Insurance.

**Art. 2559. Council to Take Applications for Depository**

The governing body of every city, town and village in the State of Texas, incorporated under either the General or Special Laws, including those operating under special charter or amendments of charter adopted pursuant to the "Home Rule" provisions of the Constitution, is authorized to receive applications for the custody of city funds from any banking corporation, association or individual banker that may desire to be selected as a depository of the city, town or village. The school funds, from whatever source derived of incorporated cities, is part of the city funds and is subject to the provisions of this Act. Notice that such applications will be received shall be published by the City Secretary not less than one (1) nor more than four (4) weeks before said meeting in some newspaper published in that city. Any banking corporation, association or individual banker desiring to apply to be designated as a depository of the funds of such city, town, or village shall deliver to the city secretary on/or before the day of such meeting designated by such published notice, its application for such

funds, provided, however, that if any city has two or more banking institutions doing business within the city, the city shall consider bids and applications from only those institutions.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 16, ch. 9, § 1; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3; Acts 1971, 62nd Leg., p. 3047, ch. 1008, § 1, eff. Aug. 30, 1971.]

#### Art. 2560. Award and Bond

Upon considering the applications submitted, the governing body shall select as the depository or depositories of such funds the banking corporations, association or individual banker or bankers offering the most favorable terms and conditions for the handling of such funds. The governing body of such city, town or village shall have the right to reject any and all applications and readvertise for any applications. The governing body of such city, town or village shall have the power to determine and designate the character and amount of city funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits"; and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits", as used herein, shall mean any deposit which is payable on demand, and the term "time deposits", as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Within five (5) days after the selection of such depository or depositories, it shall be the duty of the banking corporation or corporations, association or associations, individual banker or bankers so selected to qualify as city depository, in one or more of the following ways, at the option of the governing body of such city, town or village:

(a) By executing and filing with the governing body, a bond or bonds, payable to the city, to be approved by the governing body, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and Laws of this State of a value equal to, or in excess of, the amount of said bond, or of a value equal to, or in excess of, the amount of said bonds when there is more than one (1) bond; and said bond or bonds shall in no event be for less than the total amount of the revenue of such city for the next preceding year for which said bond or bonds are made. The sureties shall file with the city at the time of filing said bond or bonds, a statement

containing a description of the unencumbered and non-exempt lands owned by them sufficient to identify such lands on the ground; and such statement shall remain on file with the City Secretary, attached to such bond or bonds, which statement shall contain a fair estimate of the value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by the governing body and filed with the City Secretary.

(c) By executing and filing with the governing body, a bond or bonds, in an amount and payable as provided in subdivision (a) hereinabove, to be approved by the governing body and filed with the City Secretary of such city; said bond or bonds to be signed by not less than five (5) solvent sureties, who shall prepare and file with the governing body, at the time of the filing of said bond, an itemized and verified financial statement, which shall show the aggregate net worth of all to be equal to, or in excess of, the amount of such bond or bonds as hereinabove provided for.

(d) In lieu of such personal bonds or surety bonds as above specified, said banking corporation or corporations, association or associations, individual banker or bankers so selected as the city depository, may pledge, and said depository is hereby authorized to pledge with the governing body of such city for the purpose of securing such city funds, securities of the following kind, in an amount equal to the amount of said city funds on deposit in said depository bank or banks, to-wit: United States Bonds, Certificates of Indebtedness of the United States, Treasury notes of the United States, and other evidences of indebtedness of the United States which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district or other school district in the State of Texas; or bonds issued under the Federal Farm Loan Act, or road district bonds, bonds, pledges or other evidences of indebtedness issued by the Board of Regents of the University of Texas, notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government; in shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled



in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; bank acceptances of banks having a capital stock of not less than Five Hundred Thousand (\$500,000.00) Dollars, and bonds issued by municipal corporations in Texas; and said city may accept said securities in lieu of such personal or surety bonds, which securities so pledged shall be deposited as the governing body may direct. It is provided, however, that such securities so pledged shall be approved as to kind and value by the governing body.

When the securities pledged by the depository bank to secure city funds shall be in excess of the amount required under the provisions of this Act, the governing body of such city shall permit the release of such excess; and when the city funds deposited with such depository bank shall, for any reason, increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the governing body so that the securities pledged shall at no time be of a value of less than the total amount of city funds on deposit in said depository bank. Provided, however, the determination of such value shall be in the discretion of the governing body whose decision shall be final and binding on such depository. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the governing body. Upon the request of such depository bank, the governing body shall surrender interest coupons or other evidence of interest, when due, on securities deposited with said governing body by such depository bank, provided said securities remaining pledged are ample to meet the requirements of this Act and of such governing body.

The condition of the personal bond or bonds, or surety company bond or contract, for securities pledged as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in said depository, or upon presentation upon any "time deposit" after the expiration of the period of notice required in the case of "time deposits" by the City Treasurer of the city; and that said city funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county in which such city, town, or village is located.

It shall be the duty of the governing body to investigate and inquire into the solvency of each and every surety on any personal bond or bonds so filed by such city depository and accepted by the governing body and approved as required by law, at least twice during each and every year such bonds are effective and in force, and for that purpose shall have authori-

ty to require each surety to render an itemized and verified financial statement, under oath, showing his true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any of such events, the governing body shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds, the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof; and if the statements provided for herein shall indicate that any of such lands have been disposed of, or encumbered, and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said governing body shall require a new bond meeting fully the requirements of this law. The governing body shall at any time it may deem necessary for the protection of the city, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such governing body may require any such depository, if it deems advisable, to execute a new bond, or to deliver into pledge additional or other securities. If said new bond or securities required by the governing body for any reason, as herein specified, be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the governing body may proceed to the selection of another depository in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in the law shall in any manner limit, restrict, or prevent the governing body from requiring any depository to execute a new bond, at any time such governing body may deem it necessary for the protection of the city.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., 1st C.S., p. 16, ch. 9, § 2; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3; Acts 1943, 48th Leg., p. 67, ch. 57, § 1.]

<sup>1</sup> 12 U.S.C.A. § 641 et seq. (repealed. See, now, 23 U.S.C.A. § 2001 et seq.).

#### Art. 2561. Designating Depository, etc.

As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this Act for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit

of the city. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this Act, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after the notice published in the manner hereinbefore provided, proceed to receive new applications and select another depository.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2562. Warrant and Checks Paid

The city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, shall draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant, and charge the same to the fund upon which it is drawn. In no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same, nor shall said city treasurer draw any check upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired, as required in the contract with said depository in designating said funds as "time deposits." No money belonging to the city shall be paid out of the city depository, except upon checks of the city treasurer. All such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein shall prevent the governing body from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2563. May Select at Subsequent Meeting

If for any reason no selection of a depository is made at the time fixed by this Act, said governing body may, at any subsequent meeting, after notice published as hereinbefore provided, receive applications and select a depository in the manner herein set out, and the banking corporation, association, or individual banker so selected shall remain the depository until the next regular term for the selection of a depository unless the order selecting it be revoked for the causes specified in this Act. If the governing body shall at any time deem it necessary for the protection of the city, it may by resolution, require the depository to execute

a new bond; and upon failure to do so within five (5) days after the service of a copy of the resolution on said depository, said body may proceed to select another depository in the manner hereinbefore provided.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2564. Liability of Treasurer

The City Treasurer shall not be responsible for any loss of the city funds through negligence, failure or wrongful act of such depository, but nothing in this Act shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part nor from responsibility for the said funds at any time, when, for any reason, there shall be no city depository, nor until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds in any manner by him.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2565. Restrictions Upon Drawing

No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary, except where cities are operating under charter provisions that provide for the drawing of checks or warrants on the depository or city funds in a different manner than is herein provided. No warrant shall be drawn by the mayor and secretary upon any of the special funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the City Treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No City Treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds or for the purpose of making an investment of said funds according to law. The treasurer shall report to the council on or before its first regular meeting in July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

#### Art. 2566. Definitions of Terms

All provisions of this Act shall apply to towns and villages incorporated under the General Laws of Texas, as well as to cities so incorporated, and the terms "City Secretary," and "Secretary" shall be construed to include the clerk or secretary of such towns or villages; the term "City Treasurer" shall be con-

strued to include the treasurer of such towns and villages and the term "city" shall be construed to include towns and villages.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

**Art. 2566a. Security for Deposits Not Required to Extent Covered by Federal Deposit Insurance**

Notwithstanding any provisions of this Act<sup>1</sup> requiring securities for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12b of the Federal Reserve Act as amended, or any amendments thereto.<sup>2</sup>

[Acts 1937, 45th Leg., p. 1298, ch. 484, § 4.]

<sup>1</sup> Articles 2544 to 2566.

<sup>2</sup> 12 U.S.C.A. § 1811.

**CHAPTER FOUR. SPECIAL DEPOSITORY**

**Article**

2567. Selection of Special Depository.

2568. For State Funds.

2569. Selection Optional.

**Art. 2567. Selection of Special Depository**

When any bank, which is a county, city or district depository of public funds under the laws of this State, suspends business or is taken charge of by the Comptroller of the currency or the Commissioner of Banking, as the case may be, the lawful county, city or district authorities, authorized to select the depository in the first instance, shall have the discretion and authority to select by contract a special depository for the public funds in such suspended bank. Such special depository shall assume the payment of the amount of public funds due by the suspended bank on the date of its suspension, including interest to that date, and shall pay the same to the lawfully designated public authority in accordance with the contract entered into by such special depository. The contract shall be for the performance of the agreement entered into between the proper public authorities designated above, and the special depository, and shall require the pay-

ment of the deposit in such installments as may be agreed upon, the last of which shall be paid not exceeding three years from the date of the contract. The installments, or the amount due, may be evidenced in the discretion of the contracting parties by negotiable certificates of deposit or cashier's checks, payable at specified dates, if made a part of the contract. The performance of the contract and the payment of funds described therein shall be secured by bond, or by several bonds in case of installments, to be given by the special depository with the same character of sureties as is required by regular depository bonds. The contracts and bonds of special depositories shall be approved by the authority authorized by law to approve contracts and bonds of regularly selected depositories. The rate of interest which funds placed in a special depository hereunder shall bear shall be fixed by the contract, or such funds may, in the discretion of the contracting parties, be non-interest bearing.

[Acts 1925, S.B. 84.]

**Art. 2568. For State Funds**

If any State funds are in the county depository which has failed, the amount thereof shall be ascertained by the Comptroller, who shall be authorized in his discretion to enter into a contract for the custody and payment of the same, with the special depository selected by the county authorities in the same manner that the county authorities are herein authorized so to do, and to take and approve contracts and bonds therefor. State funds thus placed in such special depository shall bear the average rate of interest received by the State on State funds placed with the regularly selected State depositories.

[Acts 1925, S.B. 84.]

**Art. 2569. Selection Optional**

Nothing in this chapter shall require the State, county, city or district authorities to select any special depository as herein permitted, but they may proceed by their lawful remedies against the failed bank, if, in their discretion, it is best for the public interest so to do.

[Acts 1925, S.B. 84.]

TITLE 48

**DESCENT AND DISTRIBUTION [Repealed]**

Arts. 2570 to 2583a. Repealed by Acts 1955,  
54th Leg., p. 88, ch. 55, § 434  
See, now, Probate Code, §§ 38 to 47 in Volume 2.

TITLE 49

**EDUCATION—PUBLIC**

*See, now, Education Code and Education  
Special Laws Table in Volume 1.*

TITLE 50

**ELECTIONS [Repealed]**

Arts. 2923 to 3173. Repealed by Acts 1951,  
52nd Leg., p. 1097, ch. 492, § 2  
See, now, Election Code in Volume 2.

# TITLE 51

## ELEEMOSYNARY INSTITUTIONS

Chapter	Article
1. General Provisions .....	3174
2. State Hospitals .....	3184
3. Other Institutions .....	3202

### CHAPTER ONE. GENERAL PROVISIONS

Article
3174. Management.
3174a. Institutions to be Known as Texas State Hospitals and Special Schools.
3174b. Board for Texas State Hospitals and Special Schools.
3174b-1. Repealed.
3174b-2. Medical Treatment and Services, Power to Provide Without Consent of Relatives, etc.
3174b-3. Occupational Therapy Programs; Equipment and Materials; Sale of Goods.
3174b-4. Outpatient Clinics; Mental Hospital; Community Hospital for Research and Education in Mental Illness.
3174b-5. Contracts for Medical Care and Treatment.
3174b-6. Conveyance of Waterworks and Sanitary Sewer System to Smith County Water Control and Improvement District No. 1.
3174b-7. Easements and Rights-of-Way on Lands of Institutions.
3174c. Refund of Moneys by Board for Texas State Hospitals and Special Schools.
3175. Duties of Superintendent.
3176. Powers of Superintendent.
3177. Functions and Duties of Superintendent.
3178. Reports.
3179. Funds.
3179a. Refunds of Excess Funds Received as Support Payments.
3180. Duty of Treasurer.
3181. Interest in Contracts.
3182. Disbursements.
3183. Support and Maintenance.
3183a. State Eleemosynary and State Memorial Park Lands.
3183b. Eminent Domain Exercised by Charitable and Eleemosynary Corporations.
3183b-1. Eminent Domain by Certain Nonprofit Charitable Corporations.
3183c. Money and Property of Inmates.
3183d. Repealed.
3183e. Contracts with Public Schools for Education of Inmates.
3183f. Habeas Corpus to Secure Release of Inmates Having Contagious Disease; Return.
3183g. Standards of Physical Safety to Assure Adequate Medical, Psychiatric and Rehabilitative Care at State Tuberculosis and Mental Hospitals and Schools for the Retarded.

#### Art. 3174. Management

Each eleemosynary institution<sup>1</sup> established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such in-

stitutions is vested in the State Board of Control.

[Acts 1925, S.B. 84.]

<sup>1</sup> Redesignated Texas State Hospitals and Special Schools. See arts. 3174a and 3174b and notes thereunder.

### Management and Control

*Acts 1965, 59th Leg., p. 173, ch. 67, §§ 1, 2, which abolished the Board for Texas State Hospitals and Special Schools and which created the Texas Department of Mental Health and Mental Retardation, gave to the Department of Mental Health and Mental Retardation exclusive control and management of certain Texas State Hospitals and Special Schools. See article 5547-202, § 2.16.*

#### Art. 3174a. Institutions to be Known as Texas State Hospitals and Special Schools

Sec. 1. From and after passage of this Act, the name "Eleemosynary Institutions" under which the Austin State Hospital, Abilene State Hospital,<sup>1</sup> Big Spring State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Wichita Falls State Hospital, Austin State School, Austin State School Farm Colony,<sup>2</sup> Mexia State School and Home, State Orphans Home,<sup>3</sup> Waco State Home,<sup>4</sup> Texas School for the Deaf, Texas School for the Blind, Texas Deaf Blind and Orphan School,<sup>5</sup> Confederate Home for Men,<sup>6</sup> Confederate Woman's Home, East Texas Tuberculosis Sanatorium, Weaver H. Baker Memorial Tuberculosis Sanatorium, Kerrville State Sanatorium,<sup>7</sup> State Tuberculosis Sanatorium,<sup>8</sup> Gainesville State School for Girls, Gatesville State School for Boys, Brady State School, Alabama-Coushatti Indian Agency<sup>9</sup> and the State Dairy and Hog Farm operate and have been entitled is hereby changed and the general name of said institutions shall hereafter be known and designated as the "Texas State Hospitals and Special Schools."

Sec. 2. Wherever the name "Eleemosynary Institutions" or any reference thereto appears in the Legislative Statutes of Texas of 1925, or in any amendment thereto or in any Acts of any Legislature passed since adoption of said Revised Statutes, such name and such reference shall hereafter mean and apply to the "Texas State Hospitals and Special Schools" in order to conform to the new name of said institutions as provided in Section 1 hereof.

Sec. 3. All Legislative Acts and appropriations heretofore passed either in or by reference to the Eleemosynary Institutions are hereby in all things ratified and confirmed in behalf of the Texas State Hospitals and Special Schools.

[Acts 1949, 51st Leg., p. 324, ch. 157.]

<sup>1</sup> Name of Abilene State Hospital changed to Abilene State School. See art. 3232b, § 1.

<sup>2</sup> Name of State School Farm Colony, Austin, Texas changed to Travis State School. See Acts 1961, 57th Leg., p. 280, ch. 153, § 1.

<sup>3</sup> Name of State Orphan Home, Corsicana, Texas changed to Corsicana State Home. See art. 5143d, § 2.

<sup>4</sup> Waco State Home, transfer of management, government and control to State Department of Public Welfare. See art. 3255b.

<sup>5</sup> Name of Texas Blind, Deaf and Orphan School changed to Texas School for the Deaf. See art. 3221c, § 2.

<sup>6</sup> Name of Texas Confederate Home for Men changed to Austin State Hospital Annex. See art. 3213a, § 1.

<sup>7</sup> Name of Kerrville State Home, Kerrville, Texas changed to Kerrville State Hospital. See Acts 1959, 56th Leg., p. 112, ch. 60, § 1.

<sup>8</sup> Name of State Tuberculosis Sanatorium changed to McKnight State Sanatorium. See art. 3238b.

<sup>9</sup> Alabama-Coushatti Indian Reservation, management and control changed to Commission for Indian Affairs. See art. 5421z, § 8.

### Art. 3174b. Board for Texas State Hospitals and Special Schools

#### Creation of Board; Members

Sec. 1. There is hereby created the Board for Texas State Hospitals and Special Schools, which shall be composed of nine (9) members to be appointed by the Governor with the advice and consent of the Senate of Texas, such appointments to be made biennially on or before February 15th. Not more than three (3) medical doctors may be members of this Board. Each member of said Board shall be a State Officer within the meaning of the Constitution and before entering upon the discharge of his duties shall take the Constitutional oath of office. The term of office of each member shall be six (6) years, except that in making the first appointments the Governor shall appoint three (3) members for a term of two (2) years each, three (3) members for a term of four (4) years each, and three (3) members for a term of six (6) years each, so that the terms of three (3) members shall expire every two (2) years. Vacancies occurring in the Board shall be filled by appointment of the Governor for the unexpired term.

#### Organization; Transfer of Powers and Duties

Sec. 2. Upon the effective date of this Act, the Governor shall appoint the Board provided in this Act and the Board shall proceed to organize as required by Section 5 of this Act and employ the Executive Director and such other personnel necessary to carry out the provisions of this Act. Effective September 1, 1949, the control and management of, and all rights, privileges, powers, and duties incident thereto including building, design and construction of the Texas State Hospitals and Special Schools which are now vested in and exercised by the State Board of Control shall be transferred to, vested in, and exercised by the Board for Texas State Hospitals and Special Schools. Provided, however, that the Board of Control shall continue to handle purchases for such institutions in the same manner as they do for other State agencies.

#### Institutions Included

Sec. 3. The term "Texas State Hospitals and Special Schools" as used in this Act shall mean The Austin State Hospital, Austin State

School, Austin State School Farm Colony<sup>1</sup>, The Confederate Home for Women, The Texas Confederate Home for Men<sup>2</sup>, The Texas Blind, Deaf and Orphan School<sup>3</sup>, The Texas School for the Blind, The Texas School for the Deaf, and the State Dairy and Hog Farm, all located in or adjacent to the City of Austin, Texas, The Abilene State Hospital, Abilene, Texas<sup>4</sup>, The Big Spring State Hospital, Big Spring, Texas, The Rusk State Hospital, Rusk, Texas, The San Antonio State Hospital, San Antonio, Texas, The Terrell State Hospital, Terrell, Texas, The Wichita Falls State Hospital, Wichita Falls, Texas, The State Tuberculosis Sanatorium<sup>5</sup>, Sanatorium, Texas, The Kerrville State Sanatorium<sup>6</sup>, Kerrville, Texas, The East Texas Tuberculosis Sanatorium, Tyler, Texas, The Weaver H. Baker Tuberculosis Sanatorium, Mission, Texas, The Mexia State School and Home, Mexia, Texas, The Alabama-Coushatti Indian Reservation, Livingston, Texas<sup>7</sup>, The Waco State Home<sup>8</sup>, Waco, Texas, The State Orphans Home, Corsicana, Texas<sup>9</sup>, The School for the Cerebral Palsied and all other institutions heretofore or hereafter referred to as "eleemosynary institutions" or "hospitals and special schools" except the Gatesville State School for Boys, Gatesville, Texas, Gainesville State School for Girls, Gainesville, Texas, and Brady State School for Negro Girls, Brady, Texas.

#### Per Diem and Expenses; Meetings

Sec. 4. Each member of the Board for Texas State Hospitals and Special Schools shall be entitled to a per diem of Ten Dollars (\$10) per day and actual and necessary expenses when engaged in the discharge of his official duties. Said Board shall hold a regular meeting on the second Monday in January, March, May, July, September and November of each year for the transaction of any and all official business. Special meetings may be called by the Chairman. Five (5) members of the Board shall constitute a quorum for the transaction of business at any meeting thereof. All meetings shall be open to the public and the Board shall keep a complete record of all its proceedings.

#### Officers and Personnel; Rules and Regulations

Sec. 5. The Board shall organize by the election of a Chairman and a Vice-Chairman from its membership, and shall organize the work of said Board as may seem proper. The Board shall have the authority to promulgate such rules and regulations as it deems proper for the efficient administration of this Act. The Board shall have the authority to employ such personnel as may be necessary for the discharge of its duties. The Board shall employ an Executive Director of the Texas State Hospitals and Special Schools named herein under said Board. The Executive Director shall receive a salary of not to exceed Ten Thousand Dollars (\$10,000) per annum and shall possess qualifications and training which suit him to manage the affairs of a modern system of State Hospitals and Special Schools,

and it shall be his duty to carry out the policies of the Board in the management and control of the institutions under said Board. The Executive Director shall give bond in the sum of Fifty Thousand Dollars (\$50,000) payable to the State of Texas conditioned upon the faithful performance of his duties.

#### Acquiring Property for Tuberculosis Sanatoriums

Sec. 8. The Board for Texas State Hospitals and Special Schools is hereby authorized to negotiate for and to acquire from the United States Government, or any agency thereof, or from any source whatsoever, by gift, purchase, or leasehold, for and on behalf of the State of Texas, for use in the State service, and in the establishment of State tuberculosis hospitals, any lands, buildings, and facilities within the State of Texas, and any personal properties wherever located, and to take title thereto for and in the name of the State of Texas.

#### Transfer of Personal Property

Sec. 9. All personal property now in use by the Board of Control for the administration of any of the institutions named herein is hereby transferred to the Board for Texas State Hospitals and Special Schools.

#### Institutional Business Managers

Sec. 10. The Superintendent of any institution named herein with the approval of the Executive Director may appoint a business manager who shall receive a salary not to exceed Six Thousand Dollars (\$6,000) per year and who shall receive the same emoluments as the Superintendent. The business manager shall manage the fiscal affairs of the institution, handle all maintenance matters, be responsible for the efficient operation of all auxiliary enterprises, and prepare and submit to the Executive Director the estimate of needed appropriations each biennium. He may have such other duties and powers as the Board for Texas State Hospitals and Special Schools may by rule and regulation prescribe. He shall give bond in the sum of Twenty-five Thousand Dollars (\$25,000) payable to the State of Texas conditioned upon the faithful performance of his duties. His signature and the approval of the State Board of Control on any account against the appropriated funds of the institutions named herein shall authorize the Comptroller to draw his warrant against the State Treasurer in payment, provided, however, the Board of Control approval shall not be required on accounts other than those arising from the purchase of merchandise.

#### Partial Invalidity

Sec. 12. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such invalid part or parts thereof would be so declared unconstitutional.

[Acts 1949, 51st Leg., p. 588, ch. 316; Acts 1959, 56th Leg., p. 379, ch. 181, § 21, eff. Aug. 11, 1959.]

<sup>1</sup> Name of Austin State School Farm Colony changed to Travis State School. See art. 3174a note.

<sup>2</sup> Name of Texas Confederate Home for Men changed to Austin State Hospital. See art. 3213a, § 1.

<sup>3</sup> Name of Texas Blind, Deaf and Orphan School changed to Texas School for the Deaf. See art. 3221c, § 2.

<sup>4</sup> Name of Abilene State Hospital changed to Abilene State School. See art. 3232b, § 1.

<sup>5</sup> Name of State Tuberculosis Sanatorium changed to McKnight State Sanatorium. See art. 3238b.

<sup>6</sup> Name of Kerrville State Home, Kerrville, Texas changed to Kerrville State Hospital. See art. 3174a, note.

<sup>7</sup> Alabama-Coushatti Indian Reservation, management and control changed to Commission for Indian Affairs. See art. 5421z, § 8.

<sup>8</sup> Waco State Home, transfer of management, government and control to State Department of Public Welfare. See art. 3255b.

<sup>9</sup> Name of State Orphan Home, Corsicana, Texas changed to Corsicana State Home. See art. 5143d, § 2.

#### Abolition

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

Art. 3174b-1. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958

Art. 3174b-2. Medical Treatment and Services, Power to Provide Without Consent of Relatives, etc.

The Board for Texas State Hospitals and Special Schools, directly or through its authorized agent or agents, shall provide or perform recognized medical treatment or services to persons admitted or committed to its care. Where the consent of any person or guardian is considered necessary, and is requested, and such person or guardian shall fail to immediately reply thereto, the performance or provision for the treatment or services shall be ordered by the superintendent upon the advice and consent of three (3) medical doctors, at least one of whom must principally be engaged in the private practice of medicine. Where there is no guardian or responsible relative to whom request can be made, treatment and operation shall be performed on the advice and consent of three (3) physicians licensed by the State Board of Medical Examiners. This authority shall not allow the performance of any operation involving sexual sterilization or frontal lobotomies.

[Acts 1955, 54th Leg., p. 86, ch. 54, § 1, eff. Sept. 6, 1955.]

Art. 3174b-3. Occupational Therapy Programs; Equipment and Materials; Sale of Goods

Sec. 1. The Board for Texas State Hospitals and Special Schools may furnish equipment, materials, and merchandise at any institution under the control and management of said Board for occupational therapy programs.

The finished goods and products produced in these programs may be sold, and the proceeds thereof may be placed in the patients' benefit fund, patients' trust fund, or a revolving fund for their further use; or the patient may purchase from the state the material to be used and keep the finished product.

Sec. 2. Pursuant to such rules and regulations as the Board shall make, the superintendents of the institutions under the control and management of said Board may enter into agreements with private individuals, persons or corporations whereby such private individuals, persons or corporations may furnish equipment, materials, and merchandise for occupational therapy programs. Such agreements, when the finished or semi-finished goods and products produced in these programs remain the property of the private individuals, persons or corporations, shall provide for the payment to the institution of a fair and reasonable rental for the use of institutional buildings and premises and equipment based upon the amount of time such buildings and premises and equipment or parts thereof are used for such activities.

Sec. 3. The Board is authorized to accept donations in money or materials to be used in these programs and may use and expend the donations in the manner requested by the donor, if not contrary to the policy of the Board for Texas State Hospitals and Special Schools.

[Acts 1955, 54th Leg., p. 1183, ch. 462, § 1; Acts 1965, 59th Leg., p. 238, ch. 104, § 1, eff. Aug. 30, 1965.]

#### Art. 3174b-4. Outpatient Clinics; Mental Hospital; Community Hospital for Research and Education in Mental Illness

##### Statement of Purposes and Public Policies

Sec. 1. It is the sense of the Legislature that the Board for Texas State Hospitals and Special Schools be authorized to establish such outpatient clinics for treating the mentally ill as such Board deems necessary and as funds for their operation are made available; and that a total mental health program be established in a given area of this State which shall consist of the following: (1) An area or community hospital of approximately sixty (60) beds to be used for treating the mentally ill and for research, training, and education in treating mental illness and an outpatient clinic which may be operated in conjunction with the community hospital; the outpatient clinics to be authorized and the community hospital and clinic to be provided for in this Act; and (2) A separate larger mental hospital of approximately five hundred (500) beds.

##### Authorization for Outpatient Clinics

Sec. 2. The Board for Texas State Hospitals and Special Schools is authorized to establish outpatient clinics for treatment of the mentally ill in such locations as deemed necessary by said Board and as money for their operation shall be made available. The Board shall acquire facilities, provide a staff, make

rules and regulations, and make contracts with persons, corporations, and agencies of local, State, and Federal governments as shall be necessary for the establishment and operation of said clinics.

##### Establishment of Community or Research Hospital

Sec. 3. There shall be constructed, established, and maintained an area or community hospital of approximately sixty (60) beds to be used in treating the mentally ill and for research, training, and education in mental illness and an outpatient clinic which may be operated in conjunction with the community hospital. Such hospital and clinic shall be located within a city where a recognized medical center is located and operating. The Board for Texas State Hospitals and Special Schools shall designate the city and select a site or sites therein for the location of said community hospital and outpatient clinic. Such site or sites shall be accessible and convenient to the local medical center and shall contain sufficient land served by adequate utilities to meet the requirements of said hospital and outpatient clinic. Said Board shall take title to the land or lands so selected by them in the name of the State of Texas for the use and benefit of said hospital and clinic; provided, that the Attorney General's Department shall first approve the title to the land or lands so selected by the Board.

##### Location and Construction of Mental Hospital

Sec. 4. The Board for Texas State Hospitals and Special Schools shall select the site for said mental hospital, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants and available medical facilities, and the same shall contain sufficient land and have utilities readily available. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said hospital; provided, however, that the Attorney General's Department shall first approve the title to the land so selected by the Board. There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient in all respects to be used for the treatment of the mentally ill; said buildings are to be provided with modern improvements for furnishing water, heat, ventilation, and sewage.

##### Preparation of Plans

Sec. 5. The Board for Texas State Hospitals and Special Schools shall proceed, within the limits of legislative appropriation of funds, to prepare plans and specifications for said buildings; and said Board is authorized to make contracts with such persons, corporations, or agencies of State, local, and Federal governments, and to accept gifts or grants of land as said Board deems proper and necessary to effect the purposes of this Act within the limits of appropriations authorized therefor.



**Personnel; Patients**

Sec. 6. Upon the completion of the buildings and facilities for either or both of said research hospital or the larger separate mental hospital, the Board for Texas State Hospitals and Special Schools shall appoint such personnel as are necessary to operate and maintain such hospital and clinic and to adequately treat such patients as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit patients to the area or community hospital and shall provide for their care and maintenance under the same applicable laws, rules and regulations as govern the admission and care of mentally ill persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally ill. The outpatient clinic shall be operated under such rules and regulations as the Board may promulgate.

The Board for Texas State Hospitals and Special Schools is hereby authorized, in its discretion, to operate and maintain such hospital and clinic as a part of such other hospital as may be constructed or operated by the Board.

**Appropriation**

Sec. 7. There is hereby appropriated to the Board for Texas State Hospitals and Special Schools such Federal funds as the United States Government may grant for the construction of such buildings, and such other funds as may be given or granted by any State agency, foundation, estate, or individual, and said Board is authorized and directed to obtain and expend such funds as may become available for the programs and facilities authorized by this Act.

**Contracts**

Sec. 8. In carrying out the research authorized by this Act, the Board or such Board's successor in function may contract with any public or private agency as it deems necessary for such purposes.

[Acts 1957, 55th Leg., p. 1280, ch. 427; Acts 1961, 57th Leg., p. 626, ch. 293, § 1; Acts 1963, 58th Leg., p. 336, ch. 128, § 1; Acts 1965, 59th Leg., p. 624, ch. 309, § 1, eff. June 1, 1965.]

**Art. 3174b-5. Contracts for Medical Care and Treatment**

Sec. 1. The Board for Texas State Hospitals and Special Schools may contract for the support, maintenance, care and treatment of mentally ill and tubercular patients committed to its jurisdiction or for whom the Board is legally responsible. Such contracts may be made between the Board and city, county, and state hospitals, private physicians, licensed nursing homes and hospitals and hospital districts.

Sec. 2. Authority to contract provided herein shall be cumulative of all other contractual rights of the Board for Texas State Hospitals and Special Schools. Provided such contracts

shall not include the assignment of any lien accruing to the State.

[Acts 1961, 57th Leg., p. 464, ch. 231, eff. May 25, 1961; Acts 1963, 58th Leg., p. 63, ch. 43, § 1, eff. Aug. 23, 1963.]

**Art. 3174b-6. Conveyance of Waterworks and Sanitary Sewer System to Smith County Water Control and Improvement District No. 1**

Sec. 1. The Board for Texas State Hospitals and Special Schools, joined by or with the consent of the United States of America acting by and through the department or agency thereof duly authorized to act therefor, is hereby authorized and empowered to convey to Smith County Water Control and Improvement District No. 1 (Owentown), a political subdivision of the state duly created and acting under the laws of Texas, the waterworks and sanitary sewer system, together with the land and easements on which same is situated, located in Smith County, Texas, and now serving East Texas Tuberculosis Hospital, Tyler, Texas, which waterworks and sanitary sewer system was heretofore conditionally conveyed to the State of Texas by the United States of America by an instrument of conveyance dated July 28, 1948. The Executive Director of the Board for Texas State Hospitals and Special Schools may execute and deliver on behalf of said Board a proper instrument or instruments necessary to effect this conveyance.

Sec. 2. The consideration for the conveyance of said waterworks and sanitary sewer system shall be the agreement of the Smith County Water Control and Improvement District No. 1 (Owentown) to operate, maintain and keep said waterworks and sanitary sewer system in such manner as will assure an adequate water and sewer service to the East Texas Tuberculosis Hospital at rates and charges to be agreed upon between the Board for Texas State Hospitals and Special Schools and the Board of Directors of the Smith County Water Control and Improvement District No. 1 (Owentown).

[Acts 1961, 57th Leg., 1st C.S., p. 33, ch. 11, eff. Aug. 11, 1961.]

**Art. 3174b-7. Easements and Rights-of-Way on Lands of Institutions**

The Board for Texas State Hospitals and Special Schools or such Board's successor in function is hereby authorized and empowered to grant permanent and temporary easements and rights-of-way over and on lands of institutions under the control and management of such Board as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use and operation of such institutions.

[Acts 1965, 59th Leg., p. 562, ch. 285, § 1, eff. Aug. 30, 1965.]

**Art. 3174c. Refund of Moneys by Board for Texas State Hospitals and Special Schools**

Sec. 1. The Board for Texas State Hospitals and Special Schools is hereby authorized

to refund any moneys collected by or paid to the state and to which it was not legally entitled, and to refund any moneys which may be paid to the state by mistake of fact or law or under duress.

Sec. 2. The Board for Texas State Hospitals and Special Schools is hereby authorized to refund any unexpended portions of payments received for the care, treatment, custody or education of any patient or student admitted to any hospital, special school, or other institution under their respective jurisdictions.

Sec. 3. The Legislature may, through its biennial Appropriation Acts for the general support and maintenance of the state government or through any special Appropriation Act, provide moneys from which the refunds authorized by this Act may be paid.

[Acts 1959, 56th Leg., p. 837, ch. 376, eff. Aug. 11, 1959.]

#### Art. 3175. Duties of Superintendent

Each superintendent shall:

1. Receive and discharge patients and pupils, superintend repairs and improvements, and see that all moneys intrusted to him are judiciously and economically expended. He shall keep an accurate and detailed account of all moneys received and expended by him, specifying the sources from which they were received, and to whom and on what account paid out.

2. Keep a register of all patients and pupils received and discharged and a full record of all operations of the institution.

3. On November 1st, of each year, submit to the Board an inventory of all the personal property belonging to the asylum, in which the estimated value shall be set opposite each article.

[Acts 1925, S.B. 84.]

#### Art. 3176. Powers of Superintendent

The Superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

2. Where not otherwise provided by law, to appoint the subordinate officers, teachers, attendants, and other employes, and to fix their salaries.

3. To remove for good cause, with the consent of the Board, any officer, teacher or employe.

4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

[Acts 1925, S.B. 84.]

#### Art. 3177. Functions and Duties of Superintendent

The business manager of each State hospital and/or special school, under the control and

management of the Board for Texas State Hospitals and Special Schools, shall be the chief disbursing officer of the institution. He shall be directly responsible to the superintendent of the institution. Each superintendent shall admit the Executive Director and members of the Board into every part of the institution and exhibit to them, at their request, all books, papers, and accounts of the institution pertaining to its business, management, discipline, and government and shall furnish the Executive Director and the Board with copies, abstracts, and reports as they may require.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 588, ch. 344, § 1.]

#### Art. 3178. Reports

On January 1st, and July 1st, of each year, the superintendent of each institution shall report to the Governor and to the Board of Control, a full sworn statement of all moneys and choses of action received by such superintendent and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the institution for the term, accompanied with such suggestions and recommendations as the superintendent may deem important to the well-being of the institution, the number of employes and the salaries of each, the number of inmates received and discharged and the number still in said institution. The report shall state the general condition of the inmates, and contain an estimate of the appropriations needed for maintenance.

[Acts 1925, S.B. 84.]

#### Art. 3179. Funds

All funds of every character received by or belonging to the institutions, other than money appropriated for their support from time to time by the Legislature, shall as soon as received, be paid over to the State Treasurer by the Board, superintendent or other person receiving them. The Treasurer shall place such sums to the credit of the general revenue fund.

[Acts 1925, S.B. 84.]

#### Art. 3179a. Refunds of Excess Funds Received as Support Payments

Sec. 1. Each of the institutions under the control and management of the Board for Texas State Hospitals and Special Schools, and The Texas Youth Council are authorized to make refunds of excess funds received by them as payment for support, maintenance, and treatment of patients or students admitted or committed to their jurisdiction when such patients or students die, escape, or are discharged. They may also refund all excess funds deducted from employees' salaries for the payment of food, lodging, and laundry when such employee dies or terminates his employment.

Sec. 2. All moneys received by any of the institutions under the control and management of the Board for Texas State Hospitals and Special Schools and The Texas Youth Council shall be deposited in a local bank approved by

the respective governing Boards. Unless otherwise specifically authorized by law, the head of the institution shall transmit such moneys as are deposited in such local bank, less authorized refunds and expenses, to the State Treasurer within seven (7) days after said moneys are deposited in such bank.

[Acts 1959, 56th Leg., p. 1062, ch. 485, eff. June 1, 1959.]

#### Art. 3180. Duty of Treasurer

The State Treasurer shall keep an exact account of the moneys received by him belonging to the institutions, from what source received, and to whom paid out and on what account. To each annual report that he may be required by law to make to the Governor or to the Legislature, he shall append a full report of such account showing the receipts and expenditures thereof for the year for which such report is made.

[Acts 1925, S.B. 84.]

#### Art. 3181. Interest in Contracts

No member of the Board of Control, superintendent or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith.

[Acts 1925, S.B. 84.]

#### Art. 3182. Disbursements

The appropriations made from time to time by the Legislature for the maintenance of the asylums shall remain on deposit in the State Treasury and be paid out as are other public funds upon the warrant of the Comptroller. The Comptroller shall not draw his warrant upon the Treasurer unless the account upon which such warrant is drawn is certified as just and correct by the superintendent and is approved by the Board.

[Acts 1925, S.B. 84.]

#### Art. 3183. Support and Maintenance

The Legislature from time to time shall make suitable provision in the general appropriation bill or otherwise for the proper support and maintenance of each asylum and eleemosynary institution of this State.

[Acts 1925, S.B. 84.]

#### Art. 3183a. State Eleemosynary and State Memorial Park Lands

Board for Lease of Eleemosynary and State Memorial Lands

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the chairman of the Board of Control, who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of Eleemosynary and State Memorial Lands." The term "Board"

wherever it appears hereafter in this Act shall mean the Board for Lease of Eleemosynary and State Memorial Park Lands. This Board shall keep a complete record in writing of all its proceedings.

#### Leases Authorized

Sec. 2. All lands or any parcel of same now owned, or that may be owned and held by the State as State Eleemosynary and State Memorial Park Lands may be leased by the Board to any person, or persons, firm, or corporation, subject to, and as provided for in this Act, for the purpose of leasing for agricultural purposes or for prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and/or gas therein belonging to the State.

#### Surveys and Subdivisions; Abstracts of Title Examined by Attorney General

Sec. 3. The Board is hereby authorized to cause the State Eleemosynary and State Memorial Park lands to be surveyed and subdivided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of title to all Eleemosynary and State Park lands, and cause same to be examined by the Attorney General, who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas leases on said lands.

#### Advertisement for Bids

Sec. 4. Wherever, in the opinion of the Board, there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of said land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold, and that sealed bids for the purchase of said oil and/or gas by lease will be opened at a designated day, at ten o'clock A.M. that day, and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) In addition the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State to be mailed generally to such persons as they think might be interested.

#### Opening Bids; Minimum Royalty

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office

of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than \$1.00 per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

**Payment Accompanying Bid; Bid to Indicate Royalty and Payments in Addition to Royalty**

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for the delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and in the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

**Lease for Reasonable and Proper Price; Rejection of Bids**

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, and less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided. Provided, that no lease for oil or gas shall be made by said Board which will permit the drilling for oil or gas within 1,000 feet of any building where patients are confined.

**Acceptable Bid Filed in General Land Office**

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by

the Board, the yearly payment may be discontinued. If before the expiration of three years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

**No Rentals Payable Pending Discovery Operations; Lease to Continue During Production**

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to penalties provided in Sections 12 and 13 of this Act.

**Assignments; Pipe Lines and Roads Over Lands Authorized**

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads over the Eleemosynary and State Park Lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

**Royalties Payable to General Land Office; Sworn Statement of Production**

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the Special Building Fund of the Eleemosynary Institutions on or before the last day of each month for the preceding month during the life of the

rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools and gas lines or gas storage. The books and accounts, receipts and discharge of all wells, tanks, pools, meters, pipelines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, or any member of the State Board of Control.

#### Protection of Lands from Drainage

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous or adjacent to land not eleemosynary and State Park Land, the acceptance of the bid and the sale made thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold, as a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

#### Forfeiture; Grounds

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discre-

tion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area, and upon all rigs, tanks, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of the said lease.

#### Records Filed In General Land Office

Sec. 14. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the General Revenue Fund, and all rentals for delay in drilling and all other payments, including all filing assignments and relinquishment fees hereunder to the credit of the General Revenue Fund.

#### Expenses Paid by Comptroller's Warrants

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand (\$2,000.00) Dollars, or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1930.

#### Partial Invalidity

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

#### Adoption by Board of Proper Forms and Regulations; Withdrawal of Lands

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

#### Reservation as to Lease of Battlefields

Sec. 17a. The said board herein created shall have no right, power or authority to lease for any purpose any of the land composing the San Jacinto Battlefield lands or Washington Park on the Brazos, and it is hereby expressly forbidden from leasing same.

[Acts 1930, 41st Leg., 4th C.S., p. 55, ch. 32; Acts 1949, 51st Leg., p. 397, ch. 212, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 910, ch. 400, § 4, eff. June 8, 1967.]

**Art. 3183b. Eminent Domain Exercised by Charitable and Eleemosynary Corporations**

That any Charitable or Eleemosynary Institution incorporated under the laws of the State of Texas, shall have the right of eminent domain and condemnation within the confines of any incorporated city in this State having more than 43,000 inhabitants according to the United States Census of 1920, which city is in a county having a population of less than 100,000 inhabitants according to said Census; such Charitable or Eleemosynary Corporation shall have the right to eminent domain with all rights and powers as fully as are conferred by Law upon steam railway corporations, which power of eminent domain shall be exercised in accordance with the provisions of Title 52, Revised Statutes of Texas of 1925.

[Acts 1931, 42nd Leg., Spec.Laws, p. 132, ch. 52, § 1.]

**Art. 3183b-1. Eminent Domain by Certain Nonprofit Charitable Corporations**

Nonprofit Charitable Corporation Affiliated with Medical Center having Medical School in County of Over 600,000 Population

Sec. 1. Any nonprofit corporation incorporated under the laws of this state for purely charitable purposes and which is directly affiliated or associated with a medical center having a medical school recognized by the Council on Medical Education and Hospitals of the American Medical Association as an integral part of its establishment, and which has for a purpose of its incorporation the provision or support of medical facilities or services for the use and benefit of the public, and which is situated in any county of this state having a population in excess of six hundred thousand (600,000) inhabitants according to the most recent Federal Census shall have the power of eminent domain and condemnation for the purposes set forth in Section 2 and Section 3 of this Act.

Acquisition of Lands Adjacent to Medical Center for Construction, Maintenance and Operation of Facilities

Sec. 2. Any charitable corporation as defined in Section 1 of this Act shall have the power of eminent domain and condemnation for the purpose of acquiring lands adjacent or contiguous (whether or not separated by public thoroughfares) to such medical center upon which are to be constructed, maintained, and operated as a part of the medical center, facilities dedicated to medical care, teaching, and research for the public welfare, including ancillary or service activities generally and customarily recognized as essential to such facilities in a medical center.

Acquisition of Lands Adjacent to Medical Center for Purpose of Conveying or Leasing; Use of Lands

Sec. 3. Any charitable corporation as defined in Section 1 of this Act shall have the power of eminent domain and condemnation for the purpose of acquiring lands adjacent or contiguous (whether or not separated by public thoroughfares) to such medical center for the purpose of conveying or leasing such lands in

the manner set forth in Section 4 of this Act to any nonprofit corporation, association, foundation or trust for the construction, maintenance, and operation of facilities to be a part of the medical center and dedicated to medical care, teaching, or research for the public welfare, including ancillary or service activities generally and customarily recognized as essential to such facilities in a medical center.

Authority and Power to Control Property Acquired; Deeds of Conveyance or Lease

Sec. 4. Any charitable corporation as defined in Section 1 of this Act in the exercise of the power of eminent domain conferred herein shall have full authority and power to control the property acquired for the purposes authorized herein, and shall have the authority to convey such property or to lease the same for a period of ninety-nine (99) years with an option to renew. Any deed of conveyance or lease as provided in Section 3 of this Act shall set forth the defeasance of conditions under which the property is conveyed or leased and the fact that it is dedicated to medical care, teaching, or research for the public welfare.

Reversion of Title to Original Owner

Sec. 5. It is expressly provided that if any property acquired under authority of this Act is not used for the purpose of medical care, teaching, or research or essential ancillary and service activities, but use for such purposes is abandoned, title to the property shall revert to the original owner from whom such property was acquired by condemnation pursuant to this Act, or to his heirs, devisees, or assigns.

Procedures and Conditions

Sec. 6. The power of eminent domain granted by this Act shall be in accordance with the procedure, conditions, and provisions as prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1959, 56th Leg., p. 367, ch. 178, eff. Aug. 11, 1959.]

**Art. 3183c. Money and Property of Inmates**

Sec. 1. The superintendent of any State institution under the jurisdiction of the Board for Texas State Hospitals and Special Schools may deposit any funds of inmates in his possession in any bank in the State, or in bonds or obligations of the United States of America or for the payment of which the faith and credit of the United States are pledged, and for the purposes of deposit or investment only, may mingle the funds of any inmate with the funds of other inmates. The superintendent may deposit the interest or increment accruing on such funds in a special fund, to be designated the "Benefit Fund," of which he shall be the trustee. He may expend the moneys in any such fund for the education or entertainment of the inmates of the institution, or for the actual expense of maintaining the fund at the institution.

Sec. 2. For the purposes of this Act the superintendent of each institution shall act as custodian of the inmates' personal funds on deposit with each particular institution. The business manager shall maintain records at all times of the amount of funds on deposit for each inmate. All disbursements of personal funds and all disbursements out of the "Benefit Fund" shall be made upon the joint signature of the superintendent and business manager.

Sec. 3. Whenever any person confined in any State institution subject to the jurisdiction of the Board for Texas State Hospitals and Special Schools dies, escapes, or is discharged or paroled from such institution, and any personal funds or property of such person remains in the hands of the superintendent thereof, and no demand is made upon said superintendent by the owner of the funds or property or his legally appointed representative, the superintendent shall hold and dispose of such funds or property as follows: (a) Funds: The superintendent shall hold the funds in the patients' personal deposit fund for a period of three (3) years. If, at the end of three (3) years, no demand has been made for the funds, the superintendent shall turn the said funds over to the State Treasurer. The State Treasurer shall hold the funds for a period of five (5) years and if, at the end of that five (5) year period, the funds have not been demanded by the owner or a legal representative, then the funds shall escheat to the State and shall become a part of the General Fund. (b) Miscellaneous Personal Property: The superintendent shall hold all other miscellaneous personal property for a period of three (3) years. At the end of that time, if there has been no demand by the owner of the property or his legal representative, the superintendent shall file with the county clerk of the county of commitment of said owner, all deeds, wills, contracts or assignments. The balance of the personal property shall be sold at auction and the funds turned over to the State Treasurer to be disposed of in the same manner as cash funds under the provisions above. If some of the property is not of a type to be filed with the county clerk and is not salable at public auction, then the superintendent of the hospital shall hold the same for a period of one more year and if at the expiration of that time no demand has been made by the owner or his legal representative, the property shall be destroyed. Before any funds are turned over to the State Treasurer, under subdivision (a), and before any papers are filed with the county clerk, and before any personal property is sold at auction or disposed of under subdivision (b) of this Section, notice of said intended disposition shall be posted at least ten (10) days prior to the disposition, in a public place at the institution where the disposition is to be made. A copy of such notice shall be mailed to the last known address of the owner of the property at least

ten (10) days prior to the disposition of the property.

[Acts 1951, 52nd Leg., p. 393, ch. 251.]

**Art. 3183d. Repealed by Acts 1959, 56th Leg., p. 379, ch. 181, § 28, eff. Aug. 11, 1959**

**Art. 3183e. Contracts with Public Schools for Education of Inmates**

Sec. 1. The Board for Texas State Hospitals and Special Schools may negotiate and enter into contracts with public schools in counties where Special Schools are located to accept and educate inmates of the Special Schools in the public schools. The Board is authorized to pay tuition to the public schools out of any appropriated funds it has available.

Sec. 2. Children admitted or committed to the Special Schools may be placed in public schools by the superintendent, and the Special School may pay a reasonable rate for the tuition of such children.

[Acts 1954, 53rd Leg., 1st C.S., p. 64, ch. 25, eff. April 22, 1954.]

**Art. 3183f. Habeas Corpus to Secure Release of Inmates Having Contagious Disease; Return**

All writs of habeas corpus filed to secure the release of persons who have contagious diseases from State Hospitals and Special Schools shall be returnable to the appropriate court in the county where the hospital in which the person is confined is located.

[Acts 1961, 57th Leg., p. 921, ch. 406, § 1, eff. June 17, 1961.]

**Art. 3183g. Standards of Physical Safety to Assure Adequate Medical, Psychiatric and Rehabilitative Care at State Tuberculosis and Mental Hospitals and Schools for the Retarded**

Sec. 1. On and after the effective date of this Act, the Texas State Department of Health shall by rule and regulation set standards as to the physical safety of buildings and adequacy of staff, in number and quality, necessary to assure a continuous plan of adequate medical, psychiatric, nursing and social work services to patients cared for in State tuberculosis hospitals, State mental hospitals and State schools for the retarded.

Sec. 2. The Texas State Department of Health shall approve those State tuberculosis hospitals, State mental hospitals and State schools for the retarded which meet the standards promulgated by it and shall certify its approval to the Texas Department of Public Welfare or the United States Department of Health, Education and Welfare when requested to do so.

[Acts 1967, 60th Leg., p. 430, ch. 195, eff. May 15, 1967.]

## CHAPTER TWO. STATE HOSPITALS

## Article

3184. Superintendent; Qualifications; Removal; State Board of Control, Powers as to Witnesses; Witness Fees.
3185. Name.
- 3185a. State Hospital Established West of One Hundredth Meridian.
- 3186, 3186a. Repealed.
3187. Applicable to Other Institutions.
3188. Division into Districts.
3189. Repealed.
3190. Board of Control Shall Appoint.
3191. Clinic.
3192. State Psychopathic Hospital.
- 3192a. Dallas State Hospital Created; Consolidation of Hospitals.
- 3192b. Galveston State Psychopathic Hospital Transferred to Board of Regents of University of Texas.
- 3193 to 3196. Repealed.
- 3196a. Classes of Patients Admitted.
- 3196b. State Hospital Fund.
- 3196c. Alcoholics, Treatment in State Hospitals.
- 3196c-1. Narcotic Drug Addicts; Voluntary Treatment and Commitment in State Hospitals.
- 3196d. Repealed.
3197. Admission to Pasteur Hospital.
3198. Expenses of Patients.
3199. Laws Applicable.
3200. Disposition of Fees.
3201. Compensation of Assistant Physician.
- 3201a. Harlingen State Tuberculosis Hospital; San Antonio State Tuberculosis Hospital.
- 3201a-1. Care, Treatment and Custody of Mentally Ill and Retarded Persons Infected with Tuberculosis.
- 3201a-2. Change of Names of State Tuberculosis Hospitals; Appropriations.
- 3201a-3. Pilot Program for Treatment of Respiratory Diseases; Harlingen State Chest Hospital and San Antonio State Chest Hospital.
- 3201b. Repealed.
- 3201b-1. Repealed.
- 3201b-2. Legion Annex of the Kerrville State Hospital.

**Art. 3184. Superintendent; Qualifications; Removal; State Board of Control, Powers as to Witnesses; Witness Fees**

Sec. 1. The Superintendent of each State Hospital shall be a married man, a skilled physician authorized to practice medicine in Texas, and shall have not less than five (5) years experience in the treatment of mental diseases. He shall reside at the hospital with his family and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause after a trial in a court of competent jurisdiction in Travis County, Texas, and a judicial determination of whether good cause exists for such removal.

Sec. 2. Good cause, as referred to in the preceding Article means commission of any felony or any other offense involving moral turpitude or of the failure and refusal of any Superintendent of any eleemosynary institution in the State of Texas to knowingly and willfully refuse to carry out the duties prescribed by the Legislature or by the State Board of Control.

Sec. 3. On and after September 1, 1943, the State Board of Control is authorized to enter into contract with any person having the quali-

fications hereinabove provided, as an employee of the State Board of Control, to act as Superintendent of any eleemosynary institution of the State of Texas, to which such Superintendent may be assigned, until such person is removed for good cause, as that term is defined in the preceding Article.

Sec. 4. Any member of the State Board of Control shall hereafter have the authority to administer an oath, issue a subpoena to any witness, enforce the attendance of such witness, punish for contempt, hear evidence, and a majority of such Board of Control shall have the right to render a judgment.

Sec. 5. One or more members of the State Board of Control may enforce the attendance of any witness to be and appear at the office of any eleemosynary institution in the State of Texas, by the issuance of a subpoena for such witness, and thereafter, if necessary, under the rules governing the District Courts of this State, to issue an attachment for any such witness, who fails or refuses to answer such subpoena, and any sheriff, constable, or other duly qualified executive officer in the State of Texas is hereby authorized and directed to serve such subpoena, or attachment for the attendance of any such witness.

Sec. 6. Any witness residing outside the county from which such subpoena is issued by any member of the State Board of Control, shall be entitled to mileage and per diem, now provided by law, for the attendance of any witness in the trial of a criminal case in any District Court of this state, and any officer of the law serving an attachment, or subpoena, shall be entitled to receive and collect such fees as are now provided by law for similar services in any District Court of this state.

Sec. 7. No inquiry shall ever be instituted by the State Board of Control until a majority thereof, by a written order, duly passed and entered in the minutes of such Board, shall have been made.

[Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 82, ch. 65, § 1.]

**Art. 3185. Name**

The names of the various insane hospitals and asylums, and the State Epileptic Colony and the State Colony for Feeble Minded, shall be changed, and those institutions which have been heretofore created for the care and treatment of the insane, epileptic and feeble minded, shall hereafter be designated as follows:

(a) The East Texas Hospital for Insane, which is located at Rusk in Cherokee County, Texas, shall hereafter be known as the Rusk State Hospital; and it is hereby so named.

(b) The Northwest Texas Insane Asylum which is located at Wichita Falls in Wichita County, Texas, shall hereafter be known as the Wichita Falls State Hospital; and it is hereby so named.

(c) The North Texas Hospital for the Insane which is located at Terrell in Kauf-



man County, Texas, shall hereafter be known as the Terrell State Hospital; and it is hereby so named.

(d) The Southwestern Insane Asylum which is located at San Antonio in Bexar County, Texas, shall hereafter be known as the San Antonio State Hospital; and it is hereby so named.

(e) The State Lunatic Asylum which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State Hospital; and it is hereby so named.

(f) The State Colony for Feeble Minded which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State School; and it is hereby so named.

(g) The State Epileptic Colony which is located at Abilene in Taylor County, Texas, shall hereafter be known as the Abilene State Hospital; and it is hereby so named.

[Acts 1925, S.B. 84.]

**Art. 3185a. State Hospital Established West of One Hundredth Meridian**

That there shall be constructed, established, and maintained a hospital for the care, treatment, and support of mentally ill persons of this State. It shall be known as the State Hospital; that after the said hospital has been located then the name of the town near which it is located shall be added to the name so as to thereafter read \_\_\_\_\_ State Hospital. The hospital shall be located at some point west of the one hundredth meridian, or within any county through which the one hundredth meridian passes, and any place where not less than three hundred (300) acres of good fertile agricultural land can be secured by donation to the State of Texas.

The Board of Control of the State of Texas shall select a site for said hospital, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, the supply of water, building material, fuel, fertility of soil, and healthfulness, and the same shall contain not less than three hundred (300) acres of land as above described. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said hospital; provided, however, that the Attorney General's Department shall first approve the title to the said land so selected by the said Board.

At the completion of the buildings, and when the said hospital is ready to open, the Board of Control shall appoint a Superintendent and other employees to superintend and carry on the work of such hospital as is now provided by the General Laws of the State of Texas governing such institutions.

The support and general maintenance of said hospital shall be the same in every respect as is provided for insane hospitals as now provided by law.

There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient to accommodate at least five hundred and forty (540) inmates; said buildings to be provided with modern improvements for furnishing water, heat, ventilation, and sewerage; and the Board of Control immediately after this Act goes into effect and after the selection of the site for said hospital, and after the title of said land shall have been approved by the Attorney General, shall advertise for plans and specifications for said buildings and contract for the erection of the same; and shall have the power and authority to do and perform all things necessary for carrying out the purpose of this Act. Provided that all buildings authorized by this Act, and for which an appropriation is hereby made, shall be of fireproof construction, and that the part of all plans and specifications for the erection of said buildings relating to fire protection shall be subject to the approval of the State Fire Insurance Commission.

That there shall be and there is hereby appropriated out of the General Revenues of this State not otherwise appropriated the sum of Eight Hundred and Seventeen Thousand Dollars (\$817,000) for the buildings and improvements and the expenses incurred in securing the lands for the site, providing that no money herein appropriated shall be expended for the payment of the lands selected for the site.

The total appropriation as heretofore set out shall be allocated as follows:

Item 1 Ward building and equipment .....	\$115,000.00
Item 2 Ward building and equipment .....	115,000.00
Item 3 Psychopathic building and equipment .....	127,000.00
Item 4 General hospital-clinic building and equipment .....	75,000.00
Item 5 Administration building and equipment .....	100,000.00
Item 6 Employees' quarters and equipment .....	60,000.00
Item 7 Storeroom-warehouse and equipment .....	40,000.00
Item 8 Utility and other buildings, utility and other equipment, roads, sidewalks, furniture, livestock, implements, and contingencies .....	185,000.00

Grand total, proposed new hospital .....

\$817,000.00

In the expenditure of the above itemized amounts, the Board of Control shall have the authority to make proper adjustments in the above set forth items.

[Acts 1937, 45th Leg., p. 793, ch. 388, § 1.]

Arts. 3186, 3186a. Repealed by Acts 1957, 55th Leg., p. 1413, ch. 486, § 22, eff. Jan. 1, 1958

**Art. 3187. Applicable to Other Institutions**

All laws now in force in any way affecting the East Texas Hospital for the Insane, the Northwest Texas Insane Asylum, the North Texas Hospital for Insane, the Southwestern Insane Asylum, the State Lunatic Asylum, the State Colony for Feeble Minded and the State Epileptic Colony, shall apply to the Rusk State Hospital, the Wichita Falls State Hospital, the Terrell State Hospital, the San Antonio State Hospital, the Austin State Hospital, the Austin State School and the Abilene State Hospital, subject to such changes in said laws as shall be hereinafter made.

[Acts 1925, S.B. 84.]

**Art. 3188. Division into Districts**

The Board of Control<sup>1</sup> shall divide the State into hospital districts, may change the districts from time to time, and shall designate the State hospitals to which insane, epileptic and feeble-minded persons from each district shall be admitted and may transfer patients from one institution to another. All such persons within any such districts committed, shall be committed to the State hospital designated for that district, or to the United States Veterans' Administration or such other agency or department of the United States as will accept such insane person for care or treatment. The said State Board of Control shall also have authority to transfer any legally committed patient from a State hospital to the United States Veterans' Administration or any other agency or department of the United States as will accept such person of unsound mind for care or treatment, and in case such transfer is or shall be made, the commitment and transfer order shall constitute legal authority for the restraint of such patient by the United States Veterans' Administration or such other agency or department of the United States until the Court by which such patient was adjudged insane and committed shall order such patient released.

[Acts 1925, S.B. 84; Acts 1936, 44th Leg., 3rd C.S., p. 2025, ch. 485, § 1.]

<sup>1</sup> Control and management of state hospitals, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Art. 3189. Repealed by Acts 1937, 45th Leg., p. 293, ch. 152, § 6****Art. 3190. Board of Control Shall Appoint**

The superintendent of the psychopathic hospitals hereinafter mentioned shall be appointed by the Board of Control.<sup>1</sup> Each superintendent shall be a well qualified physician thoroughly trained in psychiatry, and experienced in hospital management. He shall reside at the hospital and shall devote his whole time exclusively to the duties of his office. Each superintendent shall be appointed for an indefinite time, his continuance in service being determined by the character of administration rendered by the hospital, and shall receive a salary of four thousand dollars (\$4,000.00) per annum, payable monthly; provided that any su-

perintendent may be dismissed by the Board of Control for good cause, the reasons for such dismissal to be specified in writing, and filed with the Secretary of State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Art. 3191. Clinic**

The Board of Control<sup>1</sup> may through its agents and institutions, develop a mental hygiene clinic service for co-operation with the State Department of Public Instruction and local boards of education in the study of the mental and physical health of children who are seriously retarded in school progress or in mental development, and of all children who present problems in personality development.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Art. 3192. State Psychopathic Hospital**

There shall be established and maintained a Psychopathic Hospital at Galveston to be known as the Galveston State Psychopathic Hospital, and one at Dallas to be known as the Dallas State Psychopathic Hospital. The Galveston State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and out patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the State Medical College. The Dallas State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and in out patient clinic.

[Acts 1925, S.B. 84.]

**Art. 3192a. Dallas State Hospital Created; Consolidation of Hospitals**

That the Dallas State Hospital is hereby created, to be composed of the Dallas Psychopathic Hospital as defined in Chapter 2, Article 3192, Revised Civil Statutes, 1925, and the State Cancer and Pellagra Hospital as defined in Chapter 185 of the General and Special Laws of the 41st Legislature, Regular Session, 1929, provided there shall be only one Superintendent for said consolidated hospitals.

[Acts 1931, 42nd Leg., p. 70, ch. 47, § 1.]

**Art. 3192b. Galveston State Psychopathic Hospital Transferred to Board of Regents of University of Texas**

Sec. 1. From and after the effective date of this Act, the control and management of, and all rights, privileges, powers, and duties incident thereto, the Galveston State Psychopathic Hospital, located at Galveston, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas, and, hereafter, the aforesaid Hospital shall no longer be a part of the eleemosynary service of the State of Texas.

Sec. 2. The Galveston State Psychopathic Hospital shall continue to be used as a Hospital for the treatment of nervous and mental diseases, both in the Hospital and out-patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the School of Medicine of The University of Texas, located at Galveston, Texas.

[Acts 1945, 49th Leg., p. 384, ch. 246.]

Arts. 3193 to 3193o-2. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958

Art. 3193-1. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958

Arts. 3194 to 3196. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958

**Art. 3196a. Classes of Patients Admitted**

**Indigent Patients; Non-indigent Patients**

Sec. 1. Patients admitted to State hospitals and State psychopathic hospitals shall be of two classes, to wit:

Indigent patients;

Non-indigent patients;

Indigent patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent patients are those who possess some property out of which the State may be reimbursed, or who have someone legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such cases the State shall have the right to be reimbursed for the support, maintenance, and treatment of such patients.

**Persons Chargeable with Expenses of Patients**

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so.

**Investigations to Determine Means of Support**

Sec. 3. The State Board of Control<sup>1</sup> is authorized to demand and conduct investigations in the County Court to determine whether or not a patient is possessed of or entitled to property and/or whether or not some other person is legally liable for his support, maintenance, and treatment and to pay therefor, and to have citation issued and witnesses summoned to be heard on said investigation.

<sup>1</sup> Control and management of state hospitals, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Contracts Fixing Support**

Sec. 4. The State Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of patients in any State hospital or psychopathic hospital at a sum not to exceed the cost of same or for such part thereof as such respective patient, his relatives or guardian of his estate may be able to and agree to pay, and binding the persons making such contracts to payment thereunder.

**State Representative in Filing Claims in Probate Court**

Sec. 5. Upon the written request of the State Board of Control the County or District Attorney, or in case of the refusal or inability of both to act, the Attorney General, shall represent the State in filing a claim in Probate Court or a petition in a Court of competent jurisdiction, wherein the guardian of such patient and/or other person legally liable for his support, may be cited to appear then and there to show cause why the State should not have judgment against him or them for the amount due it for the support, maintenance, and treatment of such patient; and, upon sufficient showing, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. A verified account, sworn to by the superintendent of the respective hospitals or psychopathic hospitals wherein such patient is being treated, or has been treated, as to the amount due shall be sufficient evidence to authorize the Court to render judgment therein. The County or District Attorney representing the State shall be entitled to a commission of ten (10) per cent, of the amount collected. All moneys so collected, less such commission, shall be, by the said attorney, paid to the State Board of Control, which shall receive and receipt for the same and shall use the same for the maintenance and improvement of said institution or institutions in which said patient shall have been confined.

**Repeals**

Sec. 6. Section 4, Chapter 174, Acts, Regular Session of the Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, and all laws and parts of laws in conflict with this Act, be and they are hereby expressly repealed. There is however, specifically reserved and preserved to the State any and all rights and causes of action that accrued or arose under and by virtue of said Section 4, Chapter 174, Acts, Regular Session, Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, or any other laws repealed by this Act.

**Partial Invalidity**

Sec. 7. If any section, sentence, clause, or part of this Act shall, for any reason, be held to be invalid, such decision or holding shall not affect the remaining portions of this Act, and

it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause, or part thereof irrespective of the fact that any other sentence, section, clause, or part thereof may be declared invalid.

[Acts 1937, 45th Leg., p. 293, ch. 152.]

#### Art. 3196b. State Hospital Fund

The STATE HOSPITAL FUND is created hereby. All revenue and funds derived under and by virtue of the provisions of this Act,<sup>1</sup> save and except any portion required by Section 3, Article 7 of the Constitution of the State of Texas to be set apart for the benefit of the Public Free Schools, shall be paid into such STATE HOSPITAL FUND, anything in this Act or any other law of this State to the contrary notwithstanding. The moneys in the STATE HOSPITAL FUND shall be used for the support and maintenance, construction, remodeling and repairing of buildings, the acquisition of sites therefor, and the purchase of equipment for State Hospitals and Special Schools and those institutions under the direction of the State Youth Development Council of the State of Texas, as the same may be appropriated by the Legislature. But the Legislature may at any time provide for the transfer of any moneys remaining in or accruing to such Fund after August 31, 1951.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, art. IX.]

<sup>1</sup> Arts. 4769½, 7047, subd. 41.a(a-1), 7047b, 7047k-1, 7047l, 7047m, 7047n, 7047o, 7057a, 7057e, 7060½, 7064a-1, 7064b, 7064½, 7066c, 7070A, 7084½; Penal Auxiliary Laws, arts. 666-21½, 666-21a, 667-23A; Penal Code, art. 1111d.

#### Art. 3196c. Alcoholics, Treatment in State Hospitals

##### Constitutional Authority for Law

Sec. 1. This Act is adopted by virtue of the provisions of Section 42, Article 16, of the Constitution of the State of Texas.

##### Eligibility for Admission

Sec. 2. Any person who has been a bona fide resident of the State of Texas for a continuous period of twelve (12) months immediately prior to making application for admittance to a State Hospital as herein provided, and who is suffering from the disease of alcoholism, and who is not at that time charged with any criminal offense, shall be eligible for admission into, and care and treatment in, any State Hospital authorized by law to care for and treat mentally ill persons, subject to the provisions of this Act.

##### Admission of Alcoholics; Certification; Refusal of Admittance

Sec. 3. If there be facilities available in any such hospital, it shall be the duty of the Superintendent thereof to admit into such hospital for care and treatment, any person suffering from the disease of alcoholism who voluntarily applies for such admission, and who is certified to said hospital by a reputable citizen of this State, who is a recovered alcoholic, and by a reputable practicing physician licensed to practice medicine in this State, each of whom

shall, by written statement, certify that to the best of his knowledge and belief such applicant is an alcoholic and is in need of hospitalization and treatment; provided, however, that the Superintendent of such hospital may refuse admittance to any applicant who has been a patient receiving treatment solely for alcoholism in any such State Hospital and who has been released therefrom within twelve (12) months immediately preceding his application for admittance, if, in the opinion of the Superintendent, no useful purpose would be served by the admission of such applicant. Provided, however, no admissions shall be made under the provisions of this bill by any State Hospital which at the time of application of anyone under the provisions of this bill has a waiting list of mental patients committed to said State Hospital.

##### Period of Detention and Treatment; Notice on Release

Sec. 4. Any person admitted to a State Hospital under the provisions of this Act shall be cared for and treated, and shall be detained as a patient in such hospital for at least ten (10) days after his admittance, unless the Superintendent of such hospital determines that it is to the best interest of such patient that he be sooner released. No patient admitted to a State Hospital under the provisions of this Act shall be treated and kept in such hospital for a period in excess of ninety (90) days from the time of his admittance. Upon the release of any such patient from any such hospital, it shall be the duty of the Superintendent to give notice to the person, other than the licensed physician, who certified the patient for admittance. Any applicant who applies for admission to a State Hospital under the provisions of this Act shall be deemed to have voluntarily consented to his detention in said hospital for a period of ten (10) days and shall waive any right to be released from said hospital before the expiration of such period of time.

##### Payments for Maintenance

Sec. 5. Any person admitted to a State Hospital under the provisions of this Act shall, if he has sufficient funds, be required to pay for his maintenance at the same rate charged other patients for maintenance at such hospital, and all of the provisions of Chapter 152, Acts of the Regular Session of the 45th Legislature, 1937 (Article 3196a, Vernon's Civil Statutes) shall be applicable to any person admitted to a State Hospital under the provisions of this Act. It is provided, however, that no person otherwise eligible for admittance to a State Hospital under the provisions of this Act shall be denied admittance thereto, and care and treatment therein, because of financial inability to pay for his maintenance.

##### Partial Invalidity

Sec. 6. If any section, portion, clause, phrase or sentence in this Act be for any reason held invalid by any court, such holdings shall not in any manner affect the validity of

any other portions hereof, and if all or any portion of this Act is held to be invalid as to any particular person or class of persons, such holdings shall not in any manner affect the validity of this Act as to other persons and classes of persons.

[Acts 1951, 52nd Leg., p. 691, ch. 398.]

### Art. 3196c-1. Narcotic Drug Addicts; Voluntary Treatment and Commitment in State Hospitals

#### Eligibility for Admission

Sec. 1. Any person who has been a bona fide resident of the State of Texas for a continuous period of twelve (12) months immediately prior to making application for admittance to a state hospital as herein provided, and who is addicted to the use of narcotic drugs, shall be eligible for admission into, and care and treatment in, a state hospital under the jurisdiction of the Board of Texas State Hospitals and Special Schools.

#### Admission of Addicts; Certification; Refusal of Admittance

Sec. 2. If there be facilities available in a state hospital, the Board may in its discretion admit into a state hospital, for care and treatment, any person eligible for admission under this Act who voluntarily applies for such admission, and who is certified to the Board by a reputable practicing physician licensed to practice medicine in this State, by written statement certifying that to the best of his knowledge and belief such applicant is a narcotic drug addict and is in need of hospitalization and treatment; provided, however, that the Board may refuse admittance to any applicant who has been a patient receiving treatment solely for drug addiction in a state hospital and who has been released for admittance, if, in the opinion of the Board, no useful purpose would be served by the admission of such applicant.

#### Period of Treatment; Voluntary Consent to Detention; Waiver of Right to Release

Sec. 3. A patient admitted to a state hospital under the provisions of this Article may be treated in the hospital until he is pronounced cured by the medical authorities of the hospital unless the Superintendent of the hospital determines that further treatment will not likely be beneficial; provided, however, that the patient shall be released upon his request for release at any time. Any applicant who applies for admission to a state hospital under the provisions of this Article shall be deemed to have voluntarily consented to his detention in the hospital and shall waive any right to be released from the hospital before the expiration of such period of time.

#### Payments for Maintenance

Sec. 4. Any person admitted to a state hospital under the provision of this Article shall, if he has sufficient funds, be required to pay for his maintenance at the same rate charged other patients for maintenance at such hospi-

tal, and all the provisions of Chapter 152, Acts of the Regular Session of the Forty-fifth Legislature, 1937 (Article 3196a, Vernon's Texas Civil Statutes) shall be applicable to any person admitted to a state hospital under the provisions of this Article. However, no person otherwise eligible for admittance to a state hospital under the provisions of this Article shall be denied admittance thereto, and care and treatment therein, because of financial inability to pay for his maintenance.

#### Delinquent Children as Addicts; Commitment

Sec. 5. When any juvenile is declared to be a delinquent child because of his habitual use of or addiction to narcotic drugs, or when the judge of the juvenile court finds that any delinquent child under the jurisdiction of the court is addicted to the use of narcotic drugs, the court may order the child to be committed to the custody of the Board for Texas State Hospitals and Special Schools for treatment in a state hospital, providing there are facilities available in a State Hospital and the Board consents to such admission, to remain in the hospital until the medical authorities of the hospital certify that he is cured or that further treatment will not likely be beneficial. The delinquent child shall continue to be subject to the jurisdiction and orders of the committing court during the time of his confinement in the hospital, and shall be remanded to the court upon his discharge.

[Acts 1957, 55th Leg., p. 340, ch. 154, eff. May 6, 1957.]

Art. 3196d. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958

### Art. 3197. Admission to Pasteur Hospital

Any person affected with hydrophobia within this State shall be admitted to the Pasteur Hospital or department for the treatment of hydrophobia, under the management of the Austin State Hospital, such admission to be upon the certificate of a practicing physician and the recommendation of any county judge in this State.

[Acts 1925, S.B. 84.]

### Art. 3198. Expenses of Patients

All indigent persons afflicted with hydrophobia in the State shall be treated at the expense of the State at said Pasteur Hospital, but the county in which such indigent persons reside shall pay the traveling expenses of such persons to and from Austin and the necessary living expenses of such persons while in Austin undergoing said treatment, such expenses to be paid upon the order of the commissioners court of the county in which such persons reside when satisfactory showing is made to said court as to indigency and the reasonableness and the necessity of the expense. All non-indigent persons shall be kept, treated and maintained at said hospital at their own expense or that of the relatives, friends or guardians.

[Acts 1925, S.B. 84.]

**Art. 3199. Laws Applicable**

Laws pertaining to the introduction and control of said patients shall be the same as those applying to the Austin State Hospital.

[Acts 1925, S.B. 84.]

**Art. 3200. Disposition of Fees**

All fees collected from non-indigent patients shall be used as the Board and superintendent may direct for the support and maintenance of said hospital.

[Acts 1925, S.B. 84.]

**Art. 3201. Compensation of Assistant Physician**

The board may allow such additional compensation, not to exceed two hundred and fifty dollars per annum, to the assistant physician who does the work of this department, out of such fees collected as may be justified by the extra labor done by said assistant.

[Acts 1925, S.B. 84.]

**Art. 3201a. Harlingen State Tuberculosis Hospital; San Antonio State Tuberculosis Hospital****Establishment**

Sec. 1. There shall be constructed, established, and maintained two new hospitals for the care, treatment, and support of tuberculosis patients of this State, which hospitals are to replace the Weaver H. Baker Tuberculosis Sanatorium. One of the new hospitals shall be known as the Harlingen State Tuberculosis Hospital, and shall be located on the real property donated to the State of Texas for this purpose by Cameron County. The second of the new hospitals shall be known as the San Antonio State Tuberculosis Hospital, and shall be located on the grounds of the present San Antonio State Hospital. Upon completion of the new San Antonio State Tuberculosis Hospital, the buildings now under construction at the San Antonio State Hospital for treating tubercular mentally ill persons shall become a unit of, and a part of, the new tuberculosis hospital.

**Buildings**

Sec. 2. There shall be constructed upon the sites of the two new State Tuberculosis Hospitals specified above, permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for and treat tuberculosis patients. The Board of Texas State Hospitals and Special Schools shall proceed to prepare plans and specifications for said buildings; and immediately after this Act becomes effective and title to land designated as the site for the Harlingen State Tuberculosis Hospital shall have been approved by the Attorney General as being vested in the State of Texas, the Board shall contract for the erection of said buildings for the two tuberculosis hospitals established by this Act, as provided by law; and said Board shall have the power and authority

to do and perform all things necessary for carrying out the purposes of this Act.

**Superintendent; Personnel; Patients**

Sec. 3. Upon the completion of the buildings and facilities, the Board for Texas State Hospitals and Special Schools may employ a Superintendent for each of the two new hospitals; and shall also employ such additional personnel as are necessary to operate and maintain properly such institutions and to treat adequately such patients as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit patients to the two new hospitals, and shall provide for the care and maintenance of such patients, under the same laws, rules and regulations as govern the admission and care of tubercular patients at the McKnight State Sanatorium at Sanatorium, Texas. The Board for Texas State Hospitals and Special Schools is authorized to transfer patients between institutions in the State Hospital System for the effective use of physical facilities and medical services.

**Appropriation**

Sec. 4. There is hereby appropriated to the Board for Texas State Hospitals and Special Schools out of moneys not otherwise appropriated in the General Revenue Fund of the State Treasury, the sum of Three Million Two Hundred Twenty-five Thousand (\$3,225,000.00) Dollars for the buildings, improvements and equipment of buildings authorized in this Act.

**Federal Funds**

Sec. 5. In addition, there also is appropriated to the Board for Texas State Hospitals and Special Schools such Federal funds as the U. S. Government may grant for the construction of the Harlingen State Tuberculosis Hospital and the San Antonio State Tuberculosis Hospital, and such other funds as may be given or granted by any State Agency, and said Board is authorized and directed to obtain and to expend such funds as are available for those two projects.

**Architectural Services**

Sec. 5a. Any fees for architectural services paid from the appropriations made herein shall be at the same rate as provided in Chapter 499, Article 6, Section 3, page 1478 of the General and Special Laws of Texas, 52nd Legislature.<sup>1</sup> All contracts made in connection with such constructions and furnishings shall be subject to the review and approval of the State Board of Control.

[Acts 1953, 53rd Leg., p. 36, ch. 29, eff. March 4, 1953.]

<sup>1</sup> Appropriation Act.

**Change of Names**

*Acts 1971, 62nd Leg., p. 1001, ch. 189, § 1, changed the names of Harlingen State Tuberculosis Hospital to Harlingen State Chest Hospital, and of San Antonio State Tuberculosis Hospital to San Antonio State Chest Hospital. See article 3201a-2, § 1.*

**Art. 3201a-1. Care, Treatment and Custody of Mentally Ill and Retarded Persons Infected with Tuberculosis**

Effective September 1, 1965, the neuropsychiatric wards of the San Antonio State Tuberculosis Hospital shall be under the control, management and supervision of the State Department of Health and shall be operated as a part of the San Antonio State Tuberculosis Hospital. The Texas Department of Mental Health and Mental Retardation may transfer mentally ill persons and mentally retarded persons infected with tuberculosis to the San Antonio State Tuberculosis Hospital with or without such person's consent. The cost of maintaining and treating such persons at the San Antonio State Tuberculosis Hospital shall be paid from appropriations to the San Antonio State Tuberculosis Hospital.

[Acts 1965, 59th Leg., p. 1139, ch. 535, § 1, eff. Aug. 30, 1965.]

**Art. 3201a-2. Change of Names of State Tuberculosis Hospitals; Appropriations**

Sec. 1. The name of the Harlingen State Tuberculosis Hospital is changed to the Harlingen State Chest Hospital and the name of the San Antonio State Tuberculosis Hospital is changed to the San Antonio State Chest Hospital. The name of the East Texas Tuberculosis Hospital is changed to the East Texas Chest Hospital.

Sec. 2. All appropriations heretofore made by the Legislature for the use and benefit of the Harlingen State Tuberculosis Hospital shall be available for the use and benefit of the Harlingen State Chest Hospital, and all appropriations made by the Legislature for the use and benefit of the San Antonio State Tuberculosis Hospital shall be available for the use and benefit of the San Antonio State Chest Hospital. All appropriations heretofore made by the Legislature for the use and benefit of the East Texas Tuberculosis Hospital shall be available for the use and benefit of the East Texas Chest Hospital.

[Acts 1971, 62nd Leg., p. 1001, ch. 189, eff. May 13, 1971.]

**Art. 3201a-3. Pilot Program for Treatment of Respiratory Diseases; Harlingen State Chest Hospital and San Antonio State Chest Hospital**

**Creation**

Sec. 1. In addition to the treatment of tuberculosis, the Harlingen State Chest Hospital and San Antonio State Chest Hospital may create a pilot program to treat persons afflicted with other chronic diseases of the respiratory system regardless of the diagnosis.

**Number of Patients; Persons Treated; Payment of Charges**

Sec. 2. (a) Under this pilot program, the Harlingen State Chest Hospital and San Antonio State Chest Hospital may treat not more

than 25 patients at any one time, except as specified by this Act.

(b) The program shall be limited to:

(1) persons who are medically indigent and who have resided within the State of Texas for at least one year before making application to enter the hospital;

(2) persons who are able to pay for treatment but who are unable to obtain treatment at any other public or private institution;

(3) persons having a type of chronic pulmonary disease for which there is some hope of improvement and rehabilitation.

(c) If a person is able to pay for the treatment, the hospital shall charge the person an amount determined by the superintendent of the hospital to be a reasonable cost for the treatment received by the patient.

**Gifts and Grants; Appropriations**

Sec. 3. The State Board of Health may accept and administer gifts and grants of money in whole or on a formula basis from the federal government and from any individual, corporation, trust, federal or state vocational rehabilitation program, or foundation to carry out the purpose of this Act, and shall use any funds appropriated by the Legislature for this pilot program to operate the program.

**Treatment of Patients in Excess of Number Limited; Use of Appropriations**

Sec. 4. The State Board of Health may admit and treat more than 25 patients under this program so far as 25 or more patients do not conflict with the purpose stated in Section 6 of this Act and may use funds appropriated by the State of Texas for the inpatient cost of treating tuberculosis based on the projected average daily patient population when and to such extent that the actual overall daily patient population is less than the attendance projected in the appropriation, for the operation of the Harlingen State Chest Hospital and San Antonio State Chest Hospital, during the biennium for which this appropriation and pilot program are concurrent.

**Rules and Regulations**

Sec. 5. The State Board of Health may establish necessary rules or regulations as to the admission requirements or procedures for persons admitted for treatment under the pilot program established by this Act.

**Tuberculosis Control Program; Interference Prohibited**

Sec. 6. Services rendered under the pilot program created by this Act shall not interfere with the primary objective of the tuberculosis control program, which is case-finding, treatment, both inpatient and outpatient, and eventual eradication of the disease tuberculosis.

**Plans and Policies**

Sec. 7. The State Board of Health may formulate plans and policies for utilizing the pro-

gram created by this Act at the Harlingen State Chest Hospital and San Antonio State Chest Hospital, in connection with any other agency, institution, or facility of this State, including but not limited to research, treatment, study, and training.

[Acts 1971, 62nd Leg., p. 1860, ch. 548, eff. June 1, 1971.]

Arts. 3201b, 3201b-1. Repealed by Acts 1963, 58th Leg., p. 103, ch. 57, § 6, eff. Aug. 23, 1963

Art. 3201b-2. Legion Annex of the Kerrville State Hospital

Change of Name

Sec. 1. The name of "Legion Branch of the San Antonio State Tuberculosis Hospital," established by House Bill No. 409, Chapter 429, Acts, Fifty-fourth Legislature, Regular Session, 1955,<sup>1</sup> is hereby changed to "Legion Annex of the Kerrville State Hospital."

<sup>1</sup> Article 3201b-1 (repealed).

Control and Management; Function

Sec. 2. The Legion Annex of the Kerrville State Hospital shall be under the control and management of the Board for Texas State Hospitals and Special Schools. The function of the Legion Annex of the Kerrville State Hospital will be to provide support, maintenance and treatment under provisions of the Texas Mental Health Code for persons suffering from mental illness.

Appropriations

Sec. 3. All appropriations heretofore made by the Legislature for the use and benefit of the "Legion Branch of the San Antonio State Tuberculosis Hospital" and now effective shall be available for the use and benefit of the Legion Annex of the Kerrville State Hospital.

Contracts

Sec. 4. All contracts heretofore entered into in behalf of "Legion Branch of the San Antonio State Tuberculosis Hospital" are hereby ratified, confirmed and validated for and in behalf of Legion Annex of the Kerrville State Hospital.

Contracts for Use of Facilities

Sec. 5. The Board for Texas State Hospitals and Special Schools may contract with the Veterans Administration for the use of the facilities now occupied and known as "Legion Branch of the San Antonio State Tuberculosis Hospital" and to be hereafter known as the Legion Annex of the Kerrville State Hospital.

Repealer

Sec. 6. The following Statutes and Acts, together with all laws or parts of laws in conflict herewith, are hereby repealed.

House Bill No. 68, Chapter 30, Acts of the Fifty-third Legislature, Regular Session, 1953, compiled as Article 3201b, Texas Civil Statutes; House Bill No. 409, Chapter 429, Acts of

the Fifty-fourth Legislature, Regular Session, 1955, compiled as Article 3201b-1, Texas Civil Statutes.

[Acts 1963, 58th Leg., p. 103, ch. 57, eff. Aug. 23, 1963.]

CHAPTER THREE. OTHER INSTITUTIONS

Article

3202. Application for Admission.

3202-a. Price for Care.

3202-b. Failure to Make Required Payments.

3202-c. Repealed.

TEXAS SCHOOL FOR THE DEAF

3203 to 3205a. Repealed.

TEXAS SCHOOL FOR THE BLIND

3206, 3207. Repealed.

3207a. State Commission for the Blind.

3207b. Commission; Eligibility for Appointment; Compensation; Executive Director and Employees; Expenses and Accounts.

3207c. Vocational Rehabilitation of Blind.

STATE ORPHAN HOME

3208. Duties of Superintendent.

3209. Industrial Manager.

3210. Matron.

3211. Children Admitted.

3212. Removal of Children.

AUSTIN STATE HOSPITAL ANNEX

3213. Duties of Board.

3213a. Change of Name to Austin State Hospital Annex.

3214. Superintendent.

3215. Secretary to the Superintendent.

3216. Application for Admission.

3216a. Admission to Confederate Home; Confederate Veterans Given Priority; Senile Persons, Admission Of; Transfer From State Hospitals.

3217. Wife of Inmate.

CONFEDERATE WOMAN'S HOME

3218. Home Established.

3219. Duties and Powers of Board.

3220. Superintendent.

3220a. Services for Widows in Licensed Nursing Homes.

SOLDIERS' AND SAILORS' HOME

3220-1. Repealed.

TEXAS SCHOOL FOR THE DEAF

3221. Powers and Duties of Board of Control.

3221a. Orphan Negro Children to be Accepted in Home at Austin; Removal of Orphan Negro Children from Dickson Colored Orphanage.

3221b. Texas Blind, Deaf and Orphan School, Name Changed To.

3221c. Texas School for the Deaf; Jurisdiction of State Board of Education.

3222. Superintendent.

3222a. Relocation of Site; New Facilities; Disposition and Transfer of Lands.

3222a-1. Repealed.

COUNTY-WIDE DAY SCHOOLS FOR THE DEAF

3222b, 3222b-1. Repealed.

ABILENE STATE SCHOOL

3223 to 3232. Repealed.

3232a. Repealed.

3232b. Abilene State School, Name Changed To.

3232c. Conveyance of Excess Land of Abilene State School.



AUSTIN STATE SCHOOL

Article

3233 to 3238. Repealed.

ADDITIONAL FEEBLE-MINDED INSTITUTION

3238a. Institution for Feeble-Minded; Transfer of Persons To; Admitting Persons; Custody.

McKNIGHT STATE TUBERCULOSIS HOSPITAL

3238b to 3251a. Repealed.

AMERICAN LEGION MEMORIAL SANITORIUM

3252 to 3254. Repealed.

STATE TUBERCULOSIS SANATORIUM FOR NEGROES

3254a, 3254a-1. Repealed.

SOUTH TEXAS TUBERCULOSIS SANATORIUM

3254b. Repealed.

MOODY STATE SCHOOL FOR CEREBRAL PALSIED CHILDREN

3254c to 3254c-2. Repealed.

EAST TEXAS TUBERCULOSIS HOSPITAL

3254d, 3254d-1. Repealed.

WACO STATE HOME

- 3255. Superintendent and Officers.
- 3255a. Name of Home Changed.
- 3255b. Management, Government and Control.
- 3256. Rules and Regulations.
- 3257. Commitment of Child.
- 3258. Repealed.
- 3259. Placing Child in Children's Boarding Home; Dismissal of Child.

COLORED GIRLS TRAINING SCHOOLS

- 3259a. Repealed.
- 3259a-1. Crockett State School for Girls.
- 3259b. Acquisition or Construction and Equipment of Colored Girls' Training School; Salaries.

STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN

- 3260. Hospital Established.
- 3261. Management and Control.
- 3262. Rules and Regulations.
- 3263. Donations.

STATE CANCER AND PELLAGRA HOSPITAL

3263a. Repealed.

NAVARRO COMMUNITY FOUNDATION

3263b. Unconstitutional.

MEXIA STATE SCHOOL AND HOME; AGED SENILE PERSONS

3263c. State School and Home; Aged Senile Divisions at State Hospital.

LUFKIN STATE SCHOOL

3263d. Lufkin State School.

CORPUS CHRISTI STATE SCHOOL

3263e. Corpus Christi State School.

MENTAL HEALTH FACILITY AT LEANDER

3263f. Mental Health Facility at Leander.

Art. 3202. Application for Admission

Application for the maintenance, care and education of all deaf, dumb and blind children

shall be made by the parent or guardian of such child or children to the superintendent of the asylum under such rules as may be prescribed.

[Acts 1925, S.B. 84.]

Art. 3202-a. Price for Care

The Board for Texas State Hospitals and Special Schools, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of children maintained, supported and treated, in the State Orphans Home, the State Home for Dependent and Neglected Children, Austin State School, and the Deaf, Dumb and Blind Institute for Colored Youths, at a sum fixed by the Board for Texas State Hospitals and Special Schools, not to exceed the actual cost of supporting such child, or for such part thereof as the estate of said child or any person legally liable for such child's support may be able to pay or agree to pay, and binding the person making such contracts to payments thereunder. The costs of educating such children, however, shall not be included in arriving at such costs. Such payments by guardians shall be in accordance with the legal method controlling expenditures by guardians. The Board for Texas State Hospitals and Special Schools is authorized to demand investigation to determine whether or not a child is possessed of or entitled to property and whether or not some other person is legally liable for his support and to pay therefor. The county judge of the county from which the child is received into such institution or the county having jurisdiction over the estate of such child may from time to time, upon the request of the Board for Texas State Hospitals and Special Schools, cite the guardian of such child, or other persons legally liable for his support, to appear at some regular term of the county court having jurisdiction of such matter, then and there to show cause why the State should not be paid or have judgment for the amount due it for the support and maintenance of such child; or such guardian or other persons legally liable for the support of such child may be cited to appear at some regular term of the district court having jurisdiction of such matter, then and there to show cause why the State should not have judgment for the amount due it for the support and maintenance of such child; and, if sufficient cause be not shown, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. The certificate of the superintendent of the State institution or school wherein such child is being or shall have been supported and maintained, as to the amount due, shall be sufficient evidence to authorize the Court to render judgment. The county or district attorney, upon request of the Board for Texas State Hospitals and Special Schools, shall appear and represent the State in all cases provided for in this Section; provided, however, that the provisions of this Act

shall not apply to any child maintained, supported or treated in the Deaf, Dumb and Blind Institute for Colored Youths or Austin State School unless the person legally liable for the support of such child agrees to pay such cost as is herein provided.

[Acts 1931, 42nd Leg., p. 191, ch. 112, § 2; Acts 1945, 49th Leg. p. 50, ch. 33, § 1; Acts 1953, 53rd Leg., p. 552, ch. 201, § 1, eff. May 26, 1953.]

**Art. 3202-b. Failure to Make Required Payments**

In the event any payments are not made as required by the Board of Control it may provide for the discharge of any such children of said institutions or schools.

[Acts 1931, 42nd Leg., p. 191, ch. 112, § 3.]

**Art. 3202-c. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969**

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

**TEXAS SCHOOL FOR THE DEAF**

**Arts. 3203 to 3205a. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969**

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing these Articles, enacts Titles 1 and 2 of the Texas Education Code.

**TEXAS SCHOOL FOR THE BLIND**

**Art. 3206. Repealed by Acts 1953, 53rd Leg., p. 23, ch. 15, § 1, eff. Aug. 26, 1953**

**Art. 3207. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969**

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

**Art. 3207a. State Commission for the Blind**

Creation and Establishment; Membership; Appointment; Terms of Office; Vacancies

Sec. 1. There is hereby created and established the State Commission for the Blind, consisting of six (6) members to be appointed by the Governor and confirmed by the Senate of Texas; two (2) to be reputable blind citizens of Texas, and the other four (4) to be outstanding citizens of Texas, and whose terms of office shall be for six (6) years each, or until their successors shall have been appointed and qualified; provided, however, that the Board shall annually elect a chairman from its membership and that four (4) members shall constitute a quorum for the transaction of business; providing the term of two (2) members to expire January 1, 1945, the term of two (2) members to expire January 1, 1947, and the term of two (2) members to expire January 1, 1949; provided, however, that the present members of the State Commission for the Blind who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill

each term and shall make such appointments immediately after the effective date of this Act. Vacancies shall be filled for any unexpired term by appointment by the Governor with the advice and consent of the Senate. On January 1, 1945, and biennially thereafter, vacancies existing on said Commission shall be filled, and members selected shall be appointed for a full term of six (6) years, and each member of said Commission shall hold office until his successor has been appointed and has qualified by taking the oath of office.

Bureau of Information; Powers and Duties of Commission; Definitions

Sec. 2. (a) The State Commission for the Blind shall maintain a Bureau of Information, the object of which shall be to aid the blind and visually handicapped in finding employment.

(b) The Commission may in its discretion furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating such persons.

(c) The Commission may establish workshops and salesrooms, and shall have authority to use any receipts or earnings that accrue from the operation of industrial schools, salesrooms or workshops as provided in this Chapter, but detailed statements of receipts or earnings and expenditures shall be made monthly to the Auditor of the state.

(d) Through the employment of teachers the Commission may give instruction to adult blind persons in their homes, but the Commission shall not undertake the permanent support or maintenance of any blind person.

(e) The Commission shall maintain a current register of the blind and of persons handicapped by a visual condition which is likely to deteriorate either to blindness or to a substantial visual handicap.

(f) The Commission shall take such measures as it may deem advisable to prevent blindness and to conserve eyesight.

(g) In cases where it determines that it may appropriately and adequately do so, the Commission may provide supplemental services to visually handicapped children, in addition to those provided by the regularly established educational agencies and authorities of the state, and provide them with whatever other services the Commission determines necessary for better equipping them to achieve self-supporting economic status and to otherwise enjoy a fuller and richer life; it is the intention of the Legislature that there be full and complete cooperation between all concerned state agencies or departments toward the realization of these purposes.

(h) In cases where it determines that it may appropriately and adequately do so, the Commission shall provide vocational guidance and related services through its vocational rehabilitation division to adults having seriously defective sight.

(i) The Commission may receive and expend gifts, bequests, and devises from individuals, associations and corporations, in accordance with the provisions of this Act.

(j) When used in this Act, unless the context requires a different meaning:

(1) "Commission" means the State Commission for the Blind;

(2) "blind" means a person having not more than 20/200 of visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(3) "visual handicap" includes any eye condition for which there is a medical prognosis indicating that the eye condition is of a progressive nature and may deteriorate either to blindness or to a substantial loss of vision, or any eye condition meeting the definition of blindness contained in Subsection (2) of this Section, and shall include any physical or psychological handicap which accompanies or complements a disorder or imperfection of the eye; and

(4) "visually handicapped children," in addition to including any child with a visual handicap as defined in Subsection (3) of this Section, includes any child with a visual problem requiring cosmetic treatment, psychological assistance, counseling or other assistance which the Commission can render and which deals with a problem that relates to an unfavorable visual condition.

**Responsibility for Rendering Services to the Visually Handicapped; Inter-agency Agreements; Cooperation with Federal Government**

Sec. 2a. (a) In order to promote the greater consolidation of counseling, guidance, restoration and rehabilitation services to visually handicapped adults and children, the Commission is designated as the state agency having primary responsibility for rendering all services to the visually handicapped except those which are purely of a welfare nature or, in the case of visually handicapped children, those which are provided by the regularly established educational agencies and authorities of the state.

(b) In cases involving individuals with multiple handicaps, where one of the handicaps is of a visual nature and the other handicap is not complementary to the visual handicap, the Commission and any other agency authorized to render services shall enter into inter-agency agreements regarding the treatment of the individual with a multiple handicap. The agreement is to be negotiated with a view to providing the most beneficial service to the multiple handicapped individual with the greatest possible economy. The Commission and all other concerned state agencies are authorized to enter into general agreements regarding individ-

uals with multiple handicaps, so that a new agreement will not have to be negotiated for each particular case.

(c) The Commission shall cooperate, pursuant to agreements, with the Federal Government in carrying out the purposes of any Federal Statutes pertaining to services authorized by Sections 2 and 2a of this Chapter and is authorized to adopt such methods of administration as are found by the Federal Government to be necessary for the proper and efficient operation of such agreements or plans, and to comply with such conditions as may be necessary to secure the full benefits of applicable Federal Statutes.

(d) The Commission and other concerned state agencies may not refuse to enter into any inter-agency agreement designed to secure the full benefits of all applicable Federal Statutes for the blind of this state; all inter-agency agreements shall be negotiated with a view to securing all benefits for the visually handicapped made possible by Federal Statutes.

**Executive Secretary; Other Workers**

Sec. 3. The State Commission for the Blind may appoint and fix the compensation of an executive director and such other workers as may be necessary to make effective the purposes of this Act within the appropriations provided.

**Report to Legislature**

Sec. 4. The Commission shall make a detailed report to the Legislature by January 1st of each biennium in which it convenes, showing all appropriations received and how the same have been expended, and covering its activities and accomplishments and making recommendations therein for the further improvement of the conditions of the blind in the State.

[Acts 1931, 42nd Leg., p. 122, ch. 80; Acts 1957, 55th Leg., p. 1318, ch. 443, § 1; Acts 1965, 59th Leg., p. 243, ch. 106, §§ 1, 2; Acts 1965, 59th Leg., p. 574, ch. 291, §§ 1, 2, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1266, ch. 321, § 2, eff. Aug. 30, 1971.]

**Art. 3207b. Commission; Eligibility for Appointment; Compensation; Executive Director and Employees; Expenses and Accounts**

No paid employee of any agency carrying on work for the blind shall be eligible for appointment, nor shall any person be eligible to be appointed to serve on the Board of the State Commission for the Blind who is engaged in, associated with, or otherwise representing a business, discipline, profession or trade conducted for the primary purpose of selling or furnishing goods or services of the type provided by the State Commission for the Blind as a significant part of the assistance which the State Commission for the Blind is authorized to extend to eligible individuals. Board members of the State Commission for the Blind shall serve without compensation but shall receive their necessary traveling and other expenses actually incurred in the performance of their

duties. The State Commission for the Blind shall annually appoint an executive director and such other employees as may be necessary and authorized by legislation applicable to the State Commission for the Blind. Expenses of members of the Board and of employees shall be paid in the most efficient and practical manner authorized by law for the payment of such expenses. All accounts shall be paid in accordance with laws applicable to the State Commission for the Blind or in accordance with laws applicable to State agencies generally.

[Acts 1943, 48th Leg., p. 324, ch. 208, § 3; Acts 1949, 51st Leg., p. 1375, ch. 627, § 3; Acts 1971, 62nd Leg., p. 1265, ch. 321, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 571, ch. 244, § 1, eff. Aug. 27, 1973.]

### Art. 3207c. Vocational Rehabilitation of Blind

#### Definitions

#### Sec. 1. As used in this Act:

(a) "Commission" means the State Commission for the Blind;

(b) "Program" means the Program of Vocational Rehabilitation established by this Act.

(c) "Director" means the Executive Director of the State Commission for the Blind or his designee, who may, to the extent permitted by applicable federal regulations, devote full time and effort to the vocational rehabilitation program or to vocational rehabilitation and other closely related activities.

(d) "Employment handicap" means a physical or mental condition which constitutes, contributes to or if not corrected will probably result in an obstruction to occupational performance;

(e) "Disabled individual" means any person who has a substantial employment handicap;

(f) "Blind" means a person having not more than 20/200 of visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(g) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the Director to be necessary to compensate a blind disabled individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counselling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials; and such terms also include any additional goods or services authorized by federal leg-

islation relating to vocational rehabilitation or authorized by other closely related federal legislation through which the Commission obtains financial support.

(h) "Rehabilitation training" means all necessary training provided to a blind disabled individual to compensate for his employment handicap including, but not limited to, manual, pre-conditioning, pre-vocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities;

(i) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions;

(j) "Prosthetic appliance" means any artificial device necessary to support or take the place of any part of the body or to increase the acuity of a sense organ;

(k) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(l) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(m) "Regulations" means regulations made by the Director with the approval of the State Commission for the Blind.

(n) "Blind disabled individual" means any person for whom a medical prognosis indicates a progressive visual condition which may deteriorate so as to constitute a substantial vocational handicap, or which does constitute a substantial vocational handicap, or any person meeting the definition of blindness contained in Subsection (f) of this Section, or any person whose visual condition both falls within the definition of blindness contained in Subsection (f) and constitutes a vocational handicap.

#### Vocational Rehabilitation Program

Sec. 2. There is hereby established in the State Commission for the Blind a Program of Vocational Rehabilitation.

#### Director of Vocational Rehabilitation Program

Sec. 3. The Program shall be administered, under the general supervision and direction of the Commission, by a Director appointed by such Commission in accordance with established personnel standards and on the basis of his education, training, experience, and demon-

strated ability. In carrying out his duties under this Act the Director:

(a) shall make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this Act;

(b) shall, with the approval of the Commission establish appropriate subordinate administrative units within the Program;

(c) shall, with the approval of the Commission, appoint such personnel as he deems necessary for the efficient performance of the functions of the Program;

(d) shall prepare and submit to the Commission annual reports of activities and expenditures and, prior to each Regular Session of the Legislature, estimates of sums required for carrying out this Act and estimates of the amounts to be made available for this purpose from all sources;

(e) shall make certification for disbursement, in accordance with regulations, of funds available for vocational rehabilitation purposes;

(f) shall, with the approval of the Commission, take such other action as he deems necessary or appropriate to carry out the purposes of this Act;

(g) may, with the approval of the Commission, delegate to any officer or employee of the Program such of his powers and duties, except the making of regulations and the appointment of personnel, as he finds necessary to carry out the purposes of this Act.

#### Administration

Sec. 4. The Commission, through the Program, shall provide vocational rehabilitation services to blind disabled individuals determined by the Director to be eligible therefor and, in carrying out the purposes of this Act, the Program is authorized, among other things:

(a) To cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of blind disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this Act, such programs, facilities, and services as may be necessary or desirable;

(b) to enter into reciprocal agreement with other States to provide for the vocational rehabilitation of residents of the states concerned;

(c) to conduct research and compile statistics relating to the vocational rehabilitation of disabled blind individuals.

#### Cooperation with Federal Government

[Text of section 5 as amended by Acts 1971, 62nd Leg., p. 1267, ch. 321, § 6]

Sec. 5. The Commission, through the Program, shall cooperate, pursuant to agreements, with the Federal government in carrying out the purposes of any Federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration as are found by the Federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation; provided, however, that the Commission shall not adopt any rule or regulation which is inconsistent with existing State laws, and to comply with such conditions as may be necessary to secure the full benefits of such Federal statutes.

#### Cooperation with Federal Government

[Text of section 5 as amended by Acts 1971, 62nd Leg., p. 1268, ch. 321, § 8]

Sec. 5. The Commission shall cooperate, pursuant to agreements, with the Federal government in carrying out the purposes of any Federal statutes pertaining to vocational rehabilitation or closely related activities and is authorized to adopt such methods of administration as are found by the Federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation or for activities closely related to vocational rehabilitation. The Commission shall adopt such rules, regulations and methods of administration as might be necessary to comply with such conditions and to secure the full benefits of such Federal statutes and to this end, conditions or provisions of State laws applicable to the Commission may be modified or waived when necessary to preclude questions of conformity with the applicable regulations of Federal programs through which the Commission derives financial support, but no provision of State statute shall be modified or waived until the Commission has clearly determined that such action must be taken to preclude questions of conformity and to continue to secure the full benefit of such Federal statutes. The methods of administration to be adopted by the Commission include necessary patterns of staffing, personnel administration, and compensation of employees through a system comparable to that used with respect to other agencies of State government obtaining substantial financial support from the Federal government; providing that no personnel shall be employed except as authorized by appropriation to the Commission, nor any system of merit compensation implemented other than authorized by appropriation to the Commission, unless certification is made by the Commission to the State Auditor that such action is necessary for carrying out the statutory purposes of the Commission, that such action will be financed other than with State funds available to the Commission and will not impose additional demands upon State revenues.

Such certification to the State Auditor shall be supported by such financial information as the State Auditor might require.

**Receipt and Disbursement of Vocational Rehabilitation Funds**

Sec. 6. The State Treasurer is hereby designated as the custodian of all funds received from the Federal Government for the purpose of carrying out any Federal statutes pertaining to vocational rehabilitation. The State Treasurer shall make disbursements from such funds and from all State funds available for vocational rehabilitation purposes upon certification in the manner provided in section 3(e).

**Gifts**

Sec. 7. The Director is hereby authorized and empowered, with the approval of the Commission, to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of this Act. Gifts made under such conditions as in the judgment of the Commission are proper and consistent with the provisions of this Act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

**Eligibility for Vocational Rehabilitation**

Sec. 8. Vocational rehabilitation services shall be provided to any blind disabled individual (1) who is a resident of the State at the time of filing his application therefor and whose vocational rehabilitation, the Director determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another State or with the Federal Government: Provided, that, except as otherwise provided by law or as specified in any agreement with the Federal Government with respect to classes of individuals certified to the Commission thereunder, the following rehabilitation services shall be provided at public cost only to disabled blind individuals found to require financial assistance with respect thereto:

- (a) Physical restoration;
- (b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;
- (c) occupational licenses;
- (d) customary occupational tools and equipment;
- (e) maintenance;
- (f) training books and materials.

**Maintenance Not Assignable**

Sec. 9. The right of a disabled blind individual to maintenance under this Act shall not be transferable or assignable at law or in equity.

**Hearing**

Sec. 10. Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the Pro-

gram shall be entitled, in accordance with regulations, to a fair hearing by the Commission.

**Misuse of Vocational Rehabilitation Lists and Records**

Sec. 11. It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

**Limitation of Political Activity**

Sec. 12. No officer or employee engaged in the administration of the vocational rehabilitation program shall use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose. No such officer or employee shall take any active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. Any officer or employee violating this provision shall be subject to discharge or suspension.

**Separability**

Sec. 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

[Acts 1945, 49th Leg., p. 374, ch. 241; Acts 1965, 59th Leg., p. 243, ch. 106, § 5; Acts 1965, 59th Leg., p. 574, ch. 291, § 5, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1266, ch. 321, §§ 3 to 8, eff. Aug. 30, 1971.]

**STATE ORPHAN HOME**

**Art. 3208. Duties of Superintendent**

The superintendent shall keep a carefully prepared list containing the name and age of each child, as well as such other data concerning the history of said child as the Board may prescribe, and said lists shall be recorded in a well-bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are pro-

vided with proper educational facilities. He shall promptly answer all inquiries, by mail or otherwise concerning the orphans under his charge, and promptly inform the Board when an opportunity is presented to secure a good and permanent home for any child under his charge.

[Acts 1925, S.B. 84.]

#### Art. 3209. Industrial Manager

The Board<sup>1</sup> shall elect an industrial manager for said home whose duties and salary shall be prescribed by the Board, subject to legislative appropriation, not to exceed fifteen hundred dollars per annum.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3210. Matron

A matron of said Home shall be chosen by the superintendent, with the consent of the Board<sup>1</sup>, whose salary shall not exceed forty-five dollars per month.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3211. Children admitted

All children under the age of fourteen years shall be admitted subject only to such restrictions as the Board<sup>1</sup> may deem requisite to the welfare of said Home.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3212. Removal of Children

No person shall be permitted to remove a child from said home except under such lawful rules and regulations as the Board<sup>1</sup> may adopt. In no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

### AUSTIN STATE HOSPITAL ANNEX

#### Art. 3213. Duties of Board

The State Board of Control<sup>1</sup> shall be governed in its regulations of the affairs of the Confederate Home by the laws relative to the Deaf, Dumb and Blind institutions of this State so far as the same may be applicable, and shall make such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from

the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualifications and record as a soldier in the Confederate army or navy of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentation. Said board shall, every three months, cause to be examined by a board of physicians consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician or by any member of the Board, as to the physical condition of such inmate and if it be shown from said examination and report of said examining board of physicians that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examination shall be selected by the board, and shall be paid for such service two dollars and fifty cents each for each examination so made. Said Board shall also have charge of all the property received from the John B. Hood Camp Confederate Veterans, or from any other source for the maintenance of said home.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3213a. Change of Name to Austin State Hospital Annex

Sec. 1. The name of the "Texas Confederate Home for Men" is hereby changed to the "Austin State Hospital Annex."

Sec. 2. The Austin State Hospital Annex, after the effective date of this Act, shall be a part of the Austin State Hospital and shall be maintained and operated by the Superintendent of the Austin State Hospital, under control and management of the Board for Texas State Hospitals and Special Schools or such Board's successor in function. The function of the Austin State Hospital Annex will be to provide support, maintenance, and treatment to persons admitted or committed thereto suffering from mental illness.

Sec. 3. All appropriations heretofore made by the Legislature for the use and benefit of the Texas Confederate Home for Men and now effective shall be available for the use and benefit of the Austin State Hospital Annex.

Sec. 4. All contracts heretofore entered into in behalf of the Texas Confederate Home for Men are hereby ratified, confirmed and val-

dated for and in behalf of the Austin State Hospital Annex.

[Acts 1965, 59th Leg., p. 1267, ch. 581, eff. Aug. 30, 1965.]

#### Art. 3214. Superintendent

The Board<sup>1</sup> shall appoint a superintendent who shall be an ex-Confederate soldier or the son of an ex-Confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of same, and its general management, under the direction of the Board. He shall be under the control of said Board. He shall keep in a book prepared for that purpose, the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity in which the military service was performed, and the State from which he entered the service, and such other data concerning the history of the inmates as the Board may prescribe.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3215. Secretary to the Superintendent

The superintendent of said home shall be authorized to employ one secretary who shall keep the books of the institution and discharge such other duties as may be required of him by the superintendent. He shall be furnished board and lodging similar to other employés of the home.

[Acts 1925, S.B. 84.]

#### Art. 3216. Application for Admission

All applications for admission to said home must show on the oath of the applicant:

1. Name of applicant.
2. His age.
3. His residence (county and post-office address.)
4. The company, regiment, brigade and army in which he served.
5. That he is disabled and indigent and is not receiving a pension from any source, and is now a bona fide citizen of Texas. And further (if he did not serve in a Texas command) that he was a bona fide resident of Texas on January 1, 1895. Proof of the honorable service of applicant, as stated by himself, must be made by affidavit of two reputable persons, or by his written discharge duly authenticated with sufficient proof of identity, or such other proof in manner and form as may be entirely satisfactory to the Board.<sup>1</sup> The application must also be accompanied by a certificate of a regular practicing physician that the applicant is unable to support himself, giving the character of the disability, and that the applicant is not a lunatic, and is not afflicted with any contagious or infectious disease. All appli-

cations for admission to said home shall be passed upon by the Board.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### Art. 3216a. Admission to Confederate Home; Confederate Veterans Given Priority; Senile Persons, Admission Of; Transfer From State Hospitals

Sec. 1. All eligible Confederate Veterans hereafter making application for admission to the Texas Confederate Home for Men at Austin, Texas, be given priority of admission, and the State Board of Control<sup>1</sup> shall reserve sufficient space, at all times, for their admission and maintenance and they, together with all Confederate Veterans now maintained in said Home, and all senile persons to be transferred to said Home shall be segregated and be maintained in said Home.

Sec. 2. The Superintendent of any State Hospital is hereby authorized, upon receipt of a written order from the State Board of Control, to transfer from said Texas Hospital to the Texas Confederate Home for Men at Austin, Texas, any senile patient now being maintained in said hospital, or hereafter admitted thereto, and to relinquish custody of said senile patient, and custody of said patient is hereby placed in the Confederate Home for Men at Austin, Texas.

Sec. 3. The State Board of Control shall have the right to cause to be admitted to the Texas Confederate Home for Men at Austin, Texas, any senile aged person after such person has been duly adjudged insane, upon receipt of the certified transcript of such proceeding in the manner required by law.

Sec. 4. The Superintendent of the Texas Confederate Home for Men at Austin, Texas may, upon the recommendation of the chief physician employed at such institution, grant any senile patient confined therein a furlough or discharge in the same manner in which such senile patients are now released from State Hospitals.

Sec. 5. The Texas Confederate Home for Men at Austin, Texas, shall never be considered a custodial institution in so far as the laws, rules and regulations governing such institution affect Confederate Veterans, but shall be and is hereby made a custodial institution for senile patients.

Sec. 6. The preceding provisions of this Act are cumulative of existing law governing the Texas Confederate Home for Men, and it is the legislative intent that such home revert to the purposes for which it has been heretofore dedicated, when other facilities for the care of the senile aged patients, contemplated by this Act, are provided.

[Acts 1943, 48th Leg., p. 18, ch. 16.]

<sup>1</sup> Control and management of Texas Confederate Home for Men, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.



**Art. 3217. Wife of Inmate**

Any woman who is the wife of a Confederate soldier and who is an inmate of the Confederate Woman's Home, and whose husband is an inmate of the Confederate Home, and who became the wife of such soldier prior to his admission into the Confederate Home, may on her request be transferred from the Confederate Woman's Home to the Confederate Home and may remain as an inmate of the Confederate Home with her husband as long as her husband remains an inmate of that institution, and while such inmate she shall be entitled to the same care, support, maintenance and privileges, and be subject to the same discipline, rules and regulations as other inmates of that institution; but the wife of any Confederate soldier so transferred to the Confederate Home shall be immediately transferred back to the Confederate Woman's Home on the death of her husband, or whenever for any reason her husband ceases to be an inmate of the Confederate Home, or whenever in the judgment of the Board of Control<sup>1</sup> it will be to the interest of the individual or of the institution to make such transfer; provided, however, that when there is room in the Confederate Home and there is an overcrowded condition existing in the Confederate Woman's Home, the Board of Control may retain at or remove to said Confederate Home any widow who is entitled to the privileges conferred by this Chapter.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 5, ch. 4.]

<sup>1</sup> Control and management of Confederate Home for Women and Texas Confederate Home for Men, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**CONFEDERATE WOMAN'S HOME**

**Art. 3218. Home Established**

There shall be established in or near the city of Austin, a home for the indigent wives and widows who are over sixty years of age, of disabled ex-Confederate soldiers and sailors who entered the Confederate service from Texas, or who came to the State prior to January 1, 1880, and whose disability is the proximate result of actual service in the Confederate army for at least three months, and also for women who aided the Confederacy. This institution shall be known as the Confederate Woman's Home.

[Acts 1925, S.B. 84.]

**Transfer**

*Acts 1971, 62nd Leg., p. 1061, ch. 220, §§ 1, 2, authorized the transfer of land and improvements of the Confederate Women's Home from the Texas Department of Mental Health and Mental Retardation to the State Building Commission for disposition.*

**Art. 3219. Duties and Powers of Board**

The Board<sup>1</sup> shall make suitable rules and regulations for the admission of women to the benefits of said home and for the internal government and management of said home. The Board shall also provide such attendants and nurses as may be deemed necessary in the

management of the Home, and fix their compensation. The Board shall appoint a superintendent for the Confederate Woman's Home, with the approval of the Governor.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of Confederate Home for Women, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Art. 3220. Superintendent.**

Said superintendent must be the widow or daughter of a Confederate soldier, and shall reside in the Home and receive free board and lodging. She may hold office for a term of two years.

[Acts 1925, S.B. 84.]

**Art. 3220a. Services for Widows in Licensed Nursing Homes**

**Sec. 1.** The Texas Department of Mental Health and Mental Retardation is hereby authorized to place in licensed nursing homes those widows of Confederate soldiers and sailors who are on the pension rolls of this state and who make application to the Department for care in the Texas Confederate Women's Home. The licensed nursing home selected to care for these persons shall be mutually agreed upon by the applicant for care and the Texas Department of Mental Health and Mental Retardation.

**Sec. 2.** The Department shall reimburse the licensed nursing home selected to care for these persons from its operating expenses appropriation.

[Acts 1967, 60th Leg., p. 193, ch. 104, eff. May 4, 1967.]

**SOLDIERS' AND SAILORS' HOME**

**Art. 3220-1. Repealed by Acts 1953, 53rd Leg., p. 24, ch. 16, § 1, eff. Aug. 26, 1953**

**TEXAS SCHOOL FOR THE DEAF**

**Art. 3221. Powers and Duties of Board of Control**

**Rules and Regulations**

**Sec. 1.** The Board<sup>1</sup> shall make all necessary rules and regulations for the government of the Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans<sup>2</sup> to comport as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this State. Said Board shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation. The admission of all deaf, dumb and blind applicants to said asylum, their treatment, instruction and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein, or thereabout, shall be governed by the rules and regulations of the State Asylums for white youths for the deaf, dumb and blind, and the Board of Control shall have authority to make necessary rules and regulations for the admit-

tance, treatment, instruction and discharge of other applicants for admission to said asylum.

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

<sup>2</sup> Name changed to Texas Blind, Deaf and Orphan School, see art. 3221b.

#### Removal of Colored Youth to Austin Asylum

Sec. 2. The State Board of Control is hereby authorized to accept and care for, support and maintain, orphan negro children in said asylum, located at Austin, Texas. Said Board shall have authority to move any and all orphan negro children from the Dickson Colored Orphanage located near Gilmer, Texas, to Austin, and place them in said asylum, and care for, support and maintain them, in said institution whenever they deem it advisable to do so; and until such time said Board shall be authorized to use the land and other property at Gilmer, Texas, now occupied and used by said Dickson Colored Orphanage for such purpose, and shall have all powers and authority herein conferred to control the property of said orphanage at such place, and use it for such purposes until such time as suitable provisions shall be made for caring for said orphans at the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas.

#### Appropriation for Removal

Sec. 3. The sum of Seventy-five Hundred (\$7,500.00) Dollars is hereby appropriated out of the State Treasury to pay the expenses of caring for and transporting said negro children as provided for in this Act, and to care for, maintain and support orphan negro children as herein provided for the fiscal year ending August 31, 1929, the same to be available to the Board of Control for such purposes.

#### Additional Appropriation

Sec. 4. The further sum of Thirty Thousand (\$30,000.00) Dollars is hereby appropriated out of the State Treasury for the care, maintenance, support and transportation of said orphan negro children for the year ending August 31, 1930, and also the sum of Thirty Thousand (\$30,000.00) Dollars for the year ending August 31, 1931, the same to be available to the Board of Control for such purposes.

#### Acceptance of Donation by Dickson Colored Orphanage Incorporated

Sec. 5. The donation by the Dickson Colored Orphanage Incorporated to the State of Texas of the lands and premises, and improvements therein described in the deed conveying said property to W. H. Francis, Trustee, in trust for the State of Texas, for the establishment of an orphanage asylum for colored children; said land consisting of approximately seven hundred acres, all in solid body, situated near the Town of Gilmer in Upshur County, Texas, together with all improvements thereon, said improvements consisting of approximately

twenty-nine buildings, is hereby accepted; and said trustee is hereby directed to execute and deliver the proper deed conveying said land and premises unto the State of Texas for the purpose herein specified, free from all debts, liens, or encumbrances of any character whatsoever; the instrument conveying said property shall be drawn by the Attorney General and after its execution, shall be delivered to the State Board of Control of the State of Texas to be by it filed and recorded in the office of the County Clerk of Upshur County, Texas; the said trustee shall also furnish to the Attorney General of the State of Texas an abstract of title to said property showing said property to be free from all debts, liens or encumbrances of any character whatsoever, and it is hereby made the duty of the Attorney General to examine and approve the title to said property.

The donation by the said Dickson Colored Orphanage Incorporated to the State of Texas of all personal property owned by it and used in connection with or located at said orphanage, and consisting of several carloads of brick; approximately one thousand sacks of cement; approximately nineteen mules, four horses, twenty-five head of fairly good grade jersey cattle, a breeding sow, four pigs, a few chickens, numerous farming implements, household and kitchen furniture, cooking utensils, and food supplies, is hereby accepted and the Board of Control of this State is hereby authorized and directed to accept and receive said personal property, and to use and dispose of the same as in this Act provided.

#### Construction of Act

Sec. 6. Nothing in this Act shall be construed so as to require the real estate herein to be deeded to the State of Texas before the Board of Control shall have the authority to use the money herein appropriated for the care of said Negro orphans, but to the contrary, this Act shall be construed so as to give the Board of Control authority to accept the property herein mentioned at any time and in any manner so long as they do not bind the State of Texas to pay any indebtedness on said property; and this Act shall also give the Board of Control authority to care for, maintain and support said Negro orphans and to provide quarters and other things incidental to the welfare of said orphans such as the Board of Control may deem advisable.

#### Sale of Dickson Colored Orphanage Property Authorized

Sec. 7. As soon as all the negro children are removed from said Dickson Colored Orphanage by the Board of Control as provided for in this Act, the said Board shall be authorized, and it is hereby made its duty, to sell the said Dickson Colored Orphanage property for the best price that can be obtained therefor; said sale to be either for cash or on a credit as said Board may determine to be for the best interest of the State. The title to said real property shall be conveyed to the purchaser by deed duly executed by the members of the

Board of Control, and the title to the personal property shall be passed to the purchaser by bill of sale, duly executed by said members. The proceeds from the sale of said property when collected shall be used by the said Board of Control for the purchase of additional land, the erection of additional buildings, or the support and maintenance for the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas, as said Board may determine to be for the best interest of said institution.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21; Acts 1930, 41st Leg., 5th C.S. p. 180, ch. 40, § 1.]

**Art. 3221a. Orphan Negro Children to be Accepted in Home at Austin; Removal of Orphan Negro Children from Dickson Colored Orphanage**

**Authority of Board of Control**

Sec. 2. The State Board of Control<sup>1</sup> is hereby authorized to accept and care for, support and maintain, orphan Negro children in the Deaf, Dumb, and Blind Asylum for Colored Youths and Colored Orphans,<sup>2</sup> located at Austin, Texas. Said Board shall have authority to move any and all orphan Negro children from the Dickson Colored Orphanage located near Gilmer, Texas, to Austin, and place them in said asylum, and care for, support, and maintain them, in said institution whenever they deem it advisable to do so; and until such time said Board shall be authorized to use the land and other property at Gilmer, Texas, now occupied and used by said Dickson Colored Orphanage for such purpose, and shall have all powers and authority herein conferred to control the property of said orphanage at such place, and use it for such purposes until such time as suitable provisions shall be made for caring for said orphans at the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas.

**Dickson Colored Orphanage to be Sold**

Sec. 3. As soon as all the Negro children are removed from said Dickson Colored Orphanage by the Board of Control as provided for in this Act, the said Board shall be authorized, and it is hereby made its duty, to sell the said Dickson Colored Orphanage property for the best price that can be obtained therefor; said sale to be either for cash or on a credit as said Board may determine to be for the best interest of the State. The title to said real property shall be conveyed to the purchaser by deed duly executed by the members of the Board of Control, and the title to the personal property shall be passed to the purchaser by bill of sale, duly executed by said members. The proceeds from the sale of said property when collected shall be used by the said Board of Control for the purchase of additional land, the erection of additional buildings, or the support and maintenance for the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas, as said Board

may determine to be for the best interest of said institution.

[Acts 1937, 45th Leg., p. 879, ch. 434.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

<sup>2</sup> Name changed to Texas Blind, Deaf and Orphan School, see art. 3221b.

**Art. 3221b. Texas Blind, Deaf and Orphan School, Name Changed To**

The name of the Deaf, Dumb, and Blind Asylum for Colored Youths and Colored Orphans, which is located in Austin, Texas, be and the same is hereby changed and shall hereafter be known and designated as the Texas Blind, Deaf and Orphan School.

[Acts 1947, 50th Leg., p. 497, ch. 292, § 1.]

**Art. 3221c. Texas School for the Deaf, Jurisdiction of State Board of Education**

Sec. 1. From and after the passage of this Act, all management and administrative responsibility for the Texas Blind, Deaf and Orphan School shall be transferred from the Board for Texas State Hospitals and Special Schools to the State Board of Education.

Sec. 2. Texas Blind, and Deaf School (formerly known as Texas Blind, Deaf and Orphan School) shall hereafter be designated and known as Texas School for the Deaf and by this Act is combined and constituted, territorially and for all purposes, a part and campus of the so enlarged Texas School for the Deaf and of Texas School for the Deaf Independent School District.

Sec. 3. The State Board of Education shall have exclusive jurisdiction and control of the Texas School for the Deaf as herein or hereafter enlarged. Such jurisdiction shall extend to all physical assets, including lands, property, etc., now owned or purchased for the benefit of the former Texas Blind, and Deaf School; and appropriations, grants, funds, and gifts made for the benefit thereof shall be administered and expended by the State Board of Education.

[Acts 1963, 58th Leg., p. 208, ch. 111; Acts 1965, 59th Leg., p. 117, ch. 45, § 1, eff. Sept. 1, 1965; Acts 1967, 60th Leg., p. 1198, ch. 534, §§ 1, 2, eff. Aug. 28, 1967.]

**Art. 3222. Superintendent**

The Board<sup>1</sup> shall appoint a superintendent of said asylum. Said superintendent shall be a man of mature years and experienced and familiar with the duties required.

[Acts 1925, S.B. 84.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

**Art. 3222a. Relocation of Site; New Facilities; Disposition and Transfer of Lands**

Sec. 1. The Texas Youth Council is hereby authorized to relocate the State Blind, Deaf and Orphans School now situated on Bull Creek Road in the City of Austin, Texas, to a more suitable site.

Sec. 2. From funds appropriated in the general appropriation bill, the Texas Youth Council is directed to construct a new Blind, Deaf and Orphans School.

Sec. 3. The Texas Youth Council is authorized to enter into an inter-agency contract with the Board for State Hospitals and Special Schools for the purpose of transferring the present site of the Blind, Deaf and Orphans School to the Board for Texas State Hospitals and Special Schools for use by the Hospital Board as it so needs. The Texas Youth Council is further authorized to accept by an inter-agency contract suitable land now owned or acquired by the Hospital Board for the purpose of constructing a new Blind, Deaf and Orphans School. Should the State Hospital Board not have a suitable tract of land for such purposes, then in such event the State Hospital Board shall purchase a suitable tract of land in or near Austin, Texas to be approved by the Texas Youth Council in exchange for the present facilities at the Blind, Deaf and Orphans School. The Hospital Board is authorized to purchase such site out of any funds appropriated to them by House Bill No. 133 of the 55th Legislature;<sup>1</sup> provided, however, such monies shall not be appropriated or transferred from any medical treatment funds, for the purpose of this Act.

[Acts 1957, 55th Leg., p. 1164, ch. 389, eff. Aug. 23, 1963.]

<sup>1</sup> Arts 1957, 55th Leg., p. 870, ch. 385.

Art. 3222a-1. Repealed by Acts 1971, 62nd Leg., p. 3363, ch. 1024, art. 2, § 48, eff. Sept. 1, 1971

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

#### COUNTY-WIDE DAY SCHOOLS FOR THE DEAF

Arts. 3222b, 3222b-1. Repealed by Acts 1971, 62nd Leg., p. 3024, ch. 994, § 17(3), eff. Aug. 30, 1971

#### ABILENE STATE SCHOOL

Arts. 3223 to 3232. Repealed by Acts 1949, 51st Leg., p. 756, ch. 406, § 13

Art. 3232a. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103, eff. Jan. 1, 1958; Acts 1957, 55th Leg., p. 1207, ch. 401, § 7, eff. June 6, 1957

Art. 3232b. Abilene State School, Name Changed To

Sec. 1. The name of "Abilene State Hospital" created by H.B. No. 337, Chapter 406,<sup>1</sup> Acts of the Fifty-first Legislature, Regular Session, 1949, is hereby changed to Abilene State School. Hereafter the Abilene State School shall be operated under the provisions of the Mentally Retarded Persons Act being Senate Bill No. 221, Chapter 119,<sup>2</sup> Acts of the Fifty-fourth Legislature, Regular Session, 1955.

Sec. 2. All laws heretofore or hereafter enacted by the Legislature applicable or relating to "Abilene State Hospital" shall hereafter be applicable and relate to Abilene State School.

Sec. 3. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of "Abilene State Hospital" shall be available for the use and benefit of Abilene State School.

Sec. 4. All contracts heretofore entered into in behalf of "Abilene State Hospital" are hereby ratified, confirmed, and validated for and in behalf of Abilene State School.

Sec. 5. The Board shall employ a superintendent for the Abilene State School who shall possess such qualifications as the Board may prescribe.

Sec. 6. Epilepsy shall not bar the admission of any person to a State institution or school within this State.

[Acts 1957, 55th Leg., p. 1207, ch. 401, eff. June 6, 1957.]

<sup>1</sup> Article 3232a (repealed).

<sup>2</sup> Article 3871b.

#### Art. 3232c. Conveyance of Excess Land of Abilene State School

##### Determination of Amount of Excess Land; Sale and Conveyance

Sec. 1. The Board for Texas State Hospitals and Special Schools is hereby authorized in its discretion to determine land in excess of the needs of the operation of the Abilene State School and thereafter sell and convey for cash any land which it has determined is no longer needed for the proper operation of the Abilene State School.

##### Notice to Highway Department and Board of Control

Sec. 2. After the Board has determined what land, if any, is in excess of the needs of the Abilene State School, it shall notify the State Highway Department and the State Board of Control that the land is to be sold, giving a description of the excess land. If the State Highway Department shall determine that any of said land is necessary for the construction or operation of any existing or proposed state highway, title of such land shall be retained in the state and the control over said land shall be transferred to the State Highway Department under the provisions of subsection 2 of Section 4 of Chapter 300, Acts of the 55th Legislature, 1957.<sup>1</sup> If the land is not to be used for any state highway purposes, then the State Board of Control shall determine if any of said land can be used for a necessary purpose by any state agency, and if the Board of Control has determined that the land can be so used, it shall notify such agency that the land is available, and if the state agency agrees to accept and use the land for a necessary purpose, then title to such land shall be retained in the state and the control of such land shall be transferred to the state agency.

Advertisement; Bids

Sec. 3. If the excess land, or any part of it, is not to be retained or used by the State Highway Department or any state agency after a period of twelve (12) months from the date of notification, then the Board for Texas State Hospitals and Special Schools may sell same after advertisement in a newspaper published in Taylor County, Texas, in at least two (2) issues thereof, the first such publication to be made at least thirty (30) days in advance of the sale date describing the land to be sold and calling for sealed bids thereon, the bids to be opened on the sale date by a majority of the Board either at its office in Austin, Texas, or at such other place as the Board may designate in the advertisement. The advertisement may describe in general terms the property to be sold but shall state that a description by metes and bounds may be obtained from the Board. Each bid shall be accompanied by cashier's or certified check in the amount of ten per cent (10%) of the amount bid which shall be forfeited to the state in the event the bidder is awarded the bid and fails or refuses to complete the purchase of the land upon tender of a deed thereto. The Board shall have the right to reject any and all bids but unless the Board elects to reject all bids it shall be required to accept the highest bid submitted. The proceeds from the sale of the land under this Act, less the expense of surveying, advertising and any other expense incidental or necessary to the accomplishment of the purpose of this Act, shall be deposited to the General Revenue Fund of the State of Texas.

Reservation of Royalty Interest in Oil and Minerals

Sec. 4. Sale of the above-described property shall be subject to a provision, to be contained in the deed, reserving to the State of Texas a one-half non-participating royalty interest in and to all oil, gas, and other minerals in and under said land.

Execution of Deed

Sec. 5. The chairman of the Board for Texas State Hospitals and Special Schools or a member of the central office staff, authorized by an appropriate resolution of the Hospital Board, may execute and deliver a proper deed, containing the reservation aforesaid, conveying any land sold under the provisions of this Act to the purchaser thereof, the form of such conveyance to be approved by the Attorney General.

[Acts 1961, 57th Leg., p. 708, ch. 333; Acts 1963, 58th Leg., p. 428, ch. 147, § 1, eff. Aug. 23, 1963.]

<sup>1</sup> Article 6674v-3, § 4, subsec. 2.

AUSTIN STATE SCHOOL

Arts. 3233 to 3238. Repealed by Acts 1955, 54th Leg., p. 438, ch. 119, § 25, eff. Sept. 6, 1955

ADDITIONAL FEEBLE-MINDED INSTITUTIONS

Art. 3238a. Institution for Feeble-Minded; Transfer of Persons To; Admitting Persons; Custody

Sec. 4. No real property, improvements, and equipment will be acquired for the sum of money herein appropriated unless there can be comfortably and properly housed therein at least 350 feeble-minded patients, and such institution is hereby dedicated for the care, hospitalization, maintenance and education of feeble-minded persons having resided in the State of Texas for a period of not less than three (3) years preceding the date of their application for admission, and of not less than seven (7) nor more than twenty-one (21) years of age.

Sec. 5. The State Board of Control<sup>1</sup> is hereby authorized to transfer from any existing eleemosynary institution in Texas unto the institution contemplated by this Act all such feeble-minded person or persons coming within the ages hereinabove set out, and the Superintendents of any such institutions are hereby authorized to make transfer of such feeble-minded patients to such new institution.

Sec. 6. The Superintendent of the institution contemplated by this Act shall admit any feeble-minded person upon commitment or legal transfer in the same manner as such feeble-minded person or persons are now admitted to the Austin State School, and such Superintendent is further authorized to furlough or discharge such feeble-minded person or persons within the custody of such institution in the same manner as is now prescribed by law for the discharge or parole of any patient confined in the Austin State School.

Sec. 7. The new feeble-minded institution contemplated by this Act is made a custodial institution, and the Superintendent and other officers and employees thereof are directed to hold in custody, subject to the terms of the law, all such feeble-minded person or persons committed to them by the courts of this state.

[Acts 1943, 48th Leg., p. 718, ch. 396.]

<sup>1</sup> Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

McKNIGHT STATE TUBERCULOSIS HOSPITAL

Arts. 3238b to 3251a. Repealed by Acts 1943, 48th Leg., p. 75, ch. 60, § 4; Acts 1959, 56th Leg., p. 379, ch. 181, § 28, eff. Aug. 11, 1959

AMERICAN LEGION MEMORIAL SANATORIUM

Arts. 3252 to 3254. Repealed by Acts 1953, 53rd Leg., p. 26, ch. 19, § 1, eff. Aug. 26, 1953

STATE TUBERCULOSIS SANATORIUM  
FOR NEGROES

Arts. 3254a, 3254a-1. Repealed by Acts 1959, 56th Leg., p. 379, ch. 181, § 28, eff. Aug. 11, 1959

SOUTH TEXAS TUBERCULOSIS  
SANATORIUM

Art. 3254b. Repealed by Acts 1947, 50th Leg., p. 1035, ch. 447, § 3

MOODY STATE SCHOOL FOR CEREBRAL  
PALSIED CHILDREN

Arts. 3254c to 3254c-2. Repealed by Acts 1971, 62nd Leg., p. 3323, ch. 1024, Art. 1, § 3, eff. Sept. 1, 1971

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing these articles, enacts Title 3 of the Texas Education Code. See, now, Education Code, § 74.051 et seq.

EAST TEXAS TUBERCULOSIS HOSPITAL

Arts. 3254d, 3254d-1. Repealed by Acts 1959, 56th Leg., p. 379, ch. 181, § 28, eff. Aug. 11, 1959

WACO STATE HOME

Art. 3255. Superintendent and Officers

The State Board of Control<sup>1</sup> shall employ as superintendent of the State Home for Dependent and Neglected Children<sup>2</sup> a person of previous experience in a similar institution. Said board shall fix the salary of the superintendent and all employes, and shall have authority to remove the superintendent for cause, and its decision in such matters shall be final. Said Board shall also appoint a physician for said Home.

[Acts 1925, S.B. 84.]

<sup>1</sup> Transfer of management, government and control to State Department of Public Welfare, see art. 3255b. Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

<sup>2</sup> Name changed to Waco State Home, see art. 3255a.

Art. 3255a. Name of Home Changed

That the name of the State Home for Dependent and Neglected Children which is located at Waco, Texas, be and the same is hereby changed and shall hereafter be known and designated as Waco State Home.

[Acts 1937, 45th Leg., p. 775, ch. 375, § 1.]

Art. 3255b. Management, Government and Control

Transfer of Management, Government and Control to Department of Public Welfare

Sec. 1. Effective the first day of the month after this Act becomes law, the management, government, and control of the Waco State Home, Waco, Texas, shall be and are hereby transferred from the Board of Texas State Hospitals and Special Schools to the State Department of Public Welfare and all other facilities hereafter established by the State for the care and education of dependent and neglected

children shall be under the control and management of the State Department of Public Welfare.

The State Department of Public Welfare shall succeed to and be vested with all the rights, powers, duties, facilities, personnel, records, and appropriations now held and which will be appropriated for the biennium beginning September 1, 1951, by the Board for Texas State Hospitals and Special Schools for the care of dependent and neglected children now in, or who may hereafter be committed to the Waco State Home, Waco, Texas.

Transfer of Personnel

Sec. 2. The personnel employed in the Waco State Home is hereby transferred to the State Department of Public Welfare.

Appointments, Duties and Compensation of Personnel

Sec. 3. When it becomes necessary to appoint a Superintendent for the institution, the State Department of Public Welfare shall have the authority to make the appointment and upon the recommendation of the Superintendent shall appoint all key employees, as defined by the State Department of Public Welfare, and shall prescribe their duties and qualifications for employment and the Superintendent is authorized to employ the subordinate employees required at the institution. The salaries, compensations, and emoluments of the Superintendent and all employees shall be fixed by the State Department of Public Welfare within the limits of the appropriation as set by the Legislature.

Transfer of Personal Property

Sec. 4. All personal property now in use by the Board for Texas State Hospitals and Special Schools for the administration of the institution named herein is hereby transferred to the State Department of Public Welfare.

School and Training Program

Sec. 5. The State Department of Public Welfare is hereby directed to set up a school and training program for the children in the institution named in this Act so as to enable the children to become self-supporting through training and education in accordance with the capability of the individual child. Such training program may be set up within the institution or it may require maintenance and support of the children in one of the State institutions of higher learning. The moneys appropriated for the maintenance and support of the institution may be used for this purpose in accordance with rules and regulations and limitations as prescribed by the State Department of Public Welfare.

Duties and Responsibilities Not Limited

Sec. 6. Nothing in this Act shall be construed to delimit the responsibilities of the institution named herein for the care of the children entrusted to it as provided in the General Statutes creating the institution and as pro-

vided in subsequent amendments prescribing the duties and responsibilities of the institution for the care of such children.

Negotiations with United States Government; Acquisition of Lands and Other Property

Sec. 9. The State Department of Public Welfare is hereby authorized to negotiate for and to acquire from the United States Government or any agency thereof or from any source whatever by gift, purchase, or leasehold for and on behalf of the State of Texas for use in the State service and in the maintenance and expansion of the State institution for dependent and neglected children which now exists, or may hereafter be created, any lands, buildings, and facilities within the State of Texas and any personal properties wherever located and to take title thereto for and in the name of the State of Texas.

[Acts 1951, 52nd Leg., p. 860, ch. 485.]

Transfer of Control

*Acts 1957, 55th Leg., p. 660, ch. 281, classified as Article 5143d, transferred control of the Waco State Home to the Texas Youth Council.*

Art. 3256. Rules and Regulations

The board<sup>1</sup> shall make necessary rules and regulations for the proper government of said Home, and shall see that the time of the children is properly distributed between the school of letters and the industrial and domestic pursuits according to what is deemed for their best interests and the facilities at hand. The superintendent shall from time to time make such recommendation to said board as may seem to be the best interests of all the children committed to said home. It shall be the duty of said controlling board to give diplomas or certificates of proficiency for grades made in any school that may be established by the board.

[Acts 1925, S.B. 84.]

<sup>1</sup> Transfer of management, government and control to State Department of Public Welfare, see art. 3255b. Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

Art. 3257. Commitment of Child

Whenever any child under sixteen years of age is brought before any juvenile court upon petition of any person within this State, charged with being a dependent or neglected child, the court may, if in the opinion of the judge the Home for Dependent and Neglected Children<sup>1</sup> is the proper place for said child, commit such child to said Home during its minority. No child who is feebleminded, epileptic, insane or afflicted with a venereal, tubercular or other communicable disease shall be assigned to this institution until cured of such disease. No child shall be admitted to the Home until he has been examined by the physician of the Home and such physician has issued a certificate showing the exact condition

in reference to said qualifications. The court committing any child to said Home shall prepare a transcript of all proceedings and attach thereto a certificate of the county health officer of such county to said transcript. If it be a girl or baby or infant committed to said Home, the judge of the court shall designate some reputable woman to convey said girl, baby or infant to said institution. The cost of conveying any child to said institution shall be paid out of the general fund of the county from which it may be committed but no compensation shall be allowed beyond actual and necessary expenses of the party conveying and the child conveyed.

[Acts 1925, S.B. 84.]

<sup>1</sup> Name changed to Waco State Home, see art. 3255a.

Art. 3258. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6

Art. 3259. Placing Child in Children's Boarding Home; Dismissal of Child

Sec. 1. Children committed to the Waco State Home may be placed by the superintendent, upon the approval of the State Board of Control<sup>1</sup> and under the authority of an order to that effect issued by the Court which committed such child to such institution, in children's boarding homes at a reasonable rate not to exceed One Dollar (\$1) per day for each child so boarded when in the judgment of such superintendent effective administration of said Waco State Home so requires; provided that such children's boarding homes shall obtain an annual license as required by law, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as the State Board of Public Welfare may prescribe for all children's boarding homes in accordance with the laws of this State as same now exist or may hereafter be enacted. No child shall be placed in such children's boarding home unless it is deemed advantageous to the welfare of such child; and children so placed shall be deemed to have the same status as other inmates of said Waco State Home and shall continue to be wards and subject to the guardianship of said Superintendent. Children shall be given preference who, in the judgment of the superintendent, are eligible upon the basis of their respective individual problems and individual needs, and who will profit most by such placement, and whose placement will make for more effective administration of the Waco State Home's program; provided, however, that no more than twenty (20) such children from all inmates of said Waco State Home shall, at any given time, be so boarded. The superintendent of said Waco State Home shall, upon the approval of said Board, replace or remove such child from such licensed boarding homes when in his discretion he deems it advisable; or upon complaint of such child, the superintendent shall remove the child from such children's boarding home; provided that nothing herein shall abridge the visitorial and regulatory powers of

the superintendent over the person of any such child so placed in such children's boarding homes, until such child has been dismissed from said Waco State Home, and then under such provisions and limitations as hereinafter stated.

Sec. 2. No child shall be dismissed from the Waco State Home until some suitable home has been found for it, or it has become self-supporting and only then upon the written recommendations of the superintendent to the State Board of Control, or when any ward committed to said Home has become married with the consent of the Board and superintendent. Children may be placed for adoption only in homes approved by the Division of Child Welfare, State Department of Public Welfare. Upon the adoption or marriage of any such child, the visitorial and regulatory powers of said Board of Control and superintendent shall terminate. Any child not adopted who goes out from this Home either under the custody of some adult or as self-supporting shall continue under the supervision and guidance of said Board. The Board or its representative shall visit the place where said child is living or employed, and it shall be the duty of the person having the custody of said child to answer all questions asked by such Board or representative concerning the conduct, employment, treatment, or condition of said child. If in the judgment of the Board it should be for the best interest of said child that it be returned to said Waco State Home, the Board is hereby empowered to have it returned.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 429, § 1; Acts 1941, 47th Leg., p. 601, ch. 369, § 1.]

<sup>1</sup> Transfer of management, government and control to State Department of Public Welfare, see art. 3255b. Control and management of state hospitals and special schools, except as to purchases, transferred from Board of Control to Board for Texas State Hospitals and Special Schools (abolished), see art. 3174b and note thereunder.

#### COLORED GIRLS TRAINING SCHOOLS

**Art. 3259a. Repealed by Acts 1965, 59th Leg., p. 330, ch. 155, § 3, eff. May 13, 1965**

**Art. 3259a-1. Crockett State School for Girls**

Change of Name; Jurisdiction and Control of School

Sec. 1. The school established pursuant to the provisions of Chapter 293, Acts of the 40th Legislature, Regular Session, 1927 (codified in Vernon's as Article 3259a, Vernon's Civil Statutes) shall from and after the effective date of this Act be known as "Crockett State School for Girls" and shall be under the jurisdiction and control of the Texas Youth Council.

##### Exercise of Powers and Duties

Sec. 2. In exercising jurisdiction and control over the Crockett State School for Girls, the Texas Youth Council shall exercise all powers and duties conferred by the provisions of Chapter 281, Acts of the 55th Legislature, Regular Session, 1957 (codified in Vernon's as Article 5143d, Vernon's Civil Statutes).

#### Repealer

Sec. 3. The provisions of Chapter 293, Acts of the 40th Legislature, Regular Session, 1927 (codified in Vernon's as Article 3259a, Vernon's Civil Statutes) are hereby repealed.

[Acts 1965, 59th Leg., p. 330, ch. 155, eff. May 13, 1965.]

**Art. 3259b. Acquisition or Construction and Equipment of Colored Girls' Training School; Salaries**

Sec. 1. The State Board of Control is hereby authorized to acquire, purchase, construct or recondition, and equip a school for the care, education and training of dependent and delinquent colored girls pursuant to the provisions of Senate Bill No. 239, Chapter 293 of the Acts of the 40th Legislature, Regular Session,<sup>1</sup> at a cost of not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

Sec. 3. The Board of Control shall fix the salaries of the Superintendent and all employees of said institution, which salaries shall not exceed those paid for similar services at other comparable state institutions.

[Acts 1945, 49th Leg., p. 136, ch. 92.]

<sup>1</sup> Article 3259a (repealed), Penal Code, art. 333a (repealed).

#### STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN

**Art. 3260. Hospital Established**

There is hereby established a State Hospital for Crippled and Deformed Children. The gift to the State of Texas by the Texas Public Health Association of the Walter Colquitt Memorial Children's Hospital, also known as the children's ward of the John Sealy Hospital on the premises of the University of Texas at Galveston, Texas, is hereby accepted by the State, and this hospital shall be the State Hospital for Crippled and Deformed Children. The term "crippled and deformed children" as used herein shall include children suffering from disease from which they may become crippled or deformed.

[Acts 1925, S.B. 84.]

**Art. 3261. Management and Control**

Said hospital shall be under the control and management of the Board of Regents of the University of Texas, which is hereby authorized and empowered to lease said hospital building to the city of Galveston in the same manner as the John Sealy Hospital buildings, and to require that provision be made in such hospital for the care and treatment of crippled and deformed children, who may be benefited or cured by treatment in said hospital, and for such other cases or patients as may be required in the interest of scientific study by the faculty and students of the Medical Department of the University of Texas.

Said Board of Regents may in its discretion receive in said hospital any sick or afflicted child who is not crippled or deformed, and who is not suffering from any communicable disease.

[Acts 1925, S.B. 84.]



**Art. 3262. Rules and Regulations**

The Board of Regents shall adopt such rules and regulations as it may deem necessary and proper for the admission, discharge, care and treatment of such children. It may require their parents or guardians to pay all or a part of the expenses of the care and treatment of patients when able to do so, otherwise it may require such payment of their home counties or cities.

[Acts 1925, S.B. 84.]

**Art. 3263. Donations**

Said Board of Regents is authorized to accept donations for the support of crippled or deformed patients, and for the improvement of the hospital and building.

[Acts 1925, S.B. 84.]

**STATE CANCER AND PELLAGRA  
HOSPITAL**

**Art. 3263a. Repealed by Acts 1953, 53rd Leg., p. 26, ch. 18, § 1, eff. Aug. 26, 1953**

**NAVARRO COMMUNITY FOUNDATION**

**Art. 3263b. Unconstitutional**

This article, Acts 1939, 49th Leg., Spec.Laws, p. 551, §§ 1-16, is void because it violates Const. Art. XII, § 1, providing that no private corporation shall be created except by general laws. Therefore, no corporation was created by this article. See *Miller v. Davis*, 136 T. 299, 150 S.W.2d 973, 136 A.L.R. 177.

**MEXIA STATE SCHOOL AND HOME;  
AGED SENILE PERSONS**

**Art. 3263c. State School and Home; Aged Senile Divisions at State Hospital**

**Name of Institution; Transfers**

Sec. 1. From and after the passage of this Act, the institution located at Mexia, Texas, should be referred to as the Mexia State School and Home. The State Board of Control is authorized to transfer from the Austin State School any feeble-minded person now being maintained in the Austin State School who is capable of profiting from the educational program at the Mexia State School and Home, and said Board is also authorized to transfer from any State Hospitals or the Austin State School to the Mexia State School and Home any aged senile persons now being maintained in such State Hospitals or the Austin State School or hereafter committed and/or admitted thereto, and custody of any such feeble-minded person or aged senile person is hereby placed in the Mexia State School and Home.

**Persons Admitted**

Sec. 2. The State Board of Control shall have the right to cause to be admitted to the Mexia State School and Home any aged person, after such person has been adjudged insane or feeble-minded, upon receipt of the certified transcript in the manner prescribed by law.

**Furlough or Discharge; Custodial Institution**

Sec. 3. The Superintendent of the Mexia State School and Home may, upon the recommendation of the chief physician employed at said institution, grant any aged senile person confined therein a furlough or discharge in the same manner by which such aged senile persons are now released from the State Hospitals or the Austin State School. Said Mexia State School and Home shall be and is hereby made a custodial institution for the care, maintenance and treatment of aged senile persons.

**Use of Part of Institution for Feeble Minded  
Persons**

Sec. 4. It is the Legislative intent that the foregoing provisions of this Act shall not apply to the operation of the school for the feeble-minded at the Mexia State School and Home, and the Board of Control is hereby authorized to continue to use a part of said institution as a school for the training of feeble-minded persons transferred to such institution from the Austin State School.

**Aged Senile Divisions**

Sec. 5. The State Board of Control is hereby authorized to establish aged senile divisions at the Austin State Hospital, Big Spring State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, and Wichita Falls State Hospital, for the care, maintenance and treatment of aged senile feeble-minded; and said Board is further authorized to transfer to such divisions within the said Hospitals any aged senile feeble-minded person now or hereafter committed or admitted to the Austin State School and such person shall be restrained in said division pursuant to the laws now governing the operation of the Austin State School and feeble-minded proceedings.

[Acts 1949, 51st Leg., p. 846, ch. 461.]

**LUFKIN STATE SCHOOL**

**Art. 3263d. Lufkin State School**

Sec. 1. Should the Board for Texas State Hospitals and Special Schools acquire from the United States of America the property and facilities located near Lufkin, Texas, and known as the Lufkin Air Force Base, said Board shall establish and maintain an additional school for the diagnosis, special training, education, supervision, treatment, care and control of mentally retarded persons of this state. After the establishment of said school, it shall be known as the "Lufkin State School."

Sec. 2. Within the limits of appropriated funds the Board is further authorized to acquire by eminent domain, purchase or gift, additional land adjacent to the facilities so acquired from the United States Government for the purpose of enlarging said school.

Sec. 3. Upon the acceptance of said facilities from the United States Government and the completion of the necessary renovations, the Board shall appoint such personnel as is necessary to operate and maintain such school

and to adequately treat such persons as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1961, 57th Leg., p. 630, ch. 296, eff. June 14, 1961.]

### CORPUS CHRISTI STATE SCHOOL

#### Art. 3263e. Corpus Christi State School

##### Construction, Establishment and Maintenance; Location

Sec. 1. There shall be constructed, established, and maintained an additional school for the diagnosis, special training, education, supervision, treatment, care and control of mentally retarded persons of this state. Its name shall be the "Corpus Christi State School," and it shall be located on land previously offered to the Board for Texas State Hospitals and Special Schools for this purpose, which land is generally described as follows:

Beginning at the northwest corner of Block 4 of the Airport Park Addition to the City of Corpus Christi as shown by map or plat of record in Vol. 8, Page 26, Map Records of Nueces County, Texas;

Thence in a southerly direction with the west boundary line of said Block 4, Airport Park Addition to the southwest corner of said Airport Park Addition;

Thence in a southeasterly direction with the south boundary line of said Airport Park Addition and continuing with the south boundary line of Block 5 of the Harlem Park Addition as recorded in Vol. 9, Page 57, Map Records of Nueces County, Texas, to a point in the northwest right-of-way line of Greenwood Drive;

Thence in a southwesterly direction with the northwest right-of-way line of Greenwood Drive to a point in the north right-of-way line of Horne Road;

Thence in a northwesterly direction with the proposed north right-of-way line of Horne Road to a point 42 feet east of the southeast corner of Lot 1 of the Gugenheim and Cohn Farm Lots;

Thence in a northerly direction with the east boundary line of the existing north-south runway of the former Cliff Maus Airport and its northerly extension to a point in the southeast right-of-way line of Old Brownsville Road;

Thence in a northeasterly and easterly direction with the southeast right-of-way line of Old Brownsville Road to the place of beginning.

4 West's Tex. Stats. & Codes—6

Save and except from above-described area the following tracts:

Tract 1. An approximately one-acre tract of land at the intersection of Greenwood Drive and Horne Road occupied by City of Corpus Christi Fire Station No. 10.

Tract 2. An approximately five-acre tract of land located on Horne Road approximately 1,000 feet northwesterly of Greenwood Drive and occupied by a Texas National Guard Armory.

Tract 3. An approximately one-fourth acre tract of land located on Greenwood Drive adjacent to the most southerly corner of the Harlem Park Addition and occupied by a City of Corpus Christi gas regulator station.

Tract 4. An easement for an existing 9' X 5' reinforced concrete box storm sewer extending in an east-west direction across the above-described property approximately 1,600 feet north of Horne Road and known as the "Blake Interceptor."

The Board shall take title to the above-described land in the name of the State of Texas for the use and benefit of said school; provided, however, that the Attorney General's Department shall first approve title to the land.

##### Buildings; Plans and Specifications

Sec. 2. There shall be constructed upon said grounds permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for mentally retarded persons; said buildings are to be provided with modern improvements for furnishing water, heat, ventilation and sewage, within the limits of legislative appropriations.

The Board for Texas State Hospitals and Special Schools shall proceed to prepare plans and specifications for said buildings; and immediately after this Act becomes effective and title to the above-described land shall have been approved by the Attorney General as being vested in the State of Texas, and upon the availability of sufficient appropriations, the Board shall contract for the erection of the necessary buildings for the proper operation of said school, as provided by law; and said Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

##### Personnel; Admission and Care of Mentally Retarded Persons

Sec. 3. Upon the completion of the buildings and facilities, the Board for Texas State Hospitals and Special Schools shall appoint such personnel as are necessary to operate and maintain such school and to adequately treat such persons as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their

care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

Corpus Christi State School Independent School District

Sec. 4. Effective with the date persons are admitted to the Corpus Christi State School, such school shall become and is hereby created the Corpus Christi State School Independent School District. The territorial limits of the Independent School District created shall be co-extensive with the territorial boundaries of the Corpus Christi State School. The Board for Texas State Hospitals and Special Schools shall be ex officio trustees of the district so created.

[Acts 1963, 58th Leg., p. 182, ch. 103, eff. Aug. 23, 1963.]

MENTAL HEALTH FACILITY AT LEANDER

Art. 3263f. Mental Health Facility at Leander

Establishment

Sec. 1. On lands under its control and management located at Leander, Texas in Williamson County consisting of 755 acres, more or less, the Texas Department of Mental Health and Mental Retardation, hereinafter referred to as Department, is authorized to construct, establish and maintain a special facility for the resocialization, training, education, rehabilitation, supervision, treatment, care and control of mentally ill and mentally retarded persons of this state.

Buildings and Improvements

Sec. 2. Buildings and improvements authorized by this Act to be constructed on said lands shall be of three types as follows:

(a) Permanent buildings to accommodate more severely involved mentally ill and mentally retarded persons.

(b) Less sophisticated summer cabin type facilities and such additional facilities as would permit participation in outdoor type recreation.

(c) Only sanitary, water and sewage facilities to accommodate active and youthful persons in an outdoor camping program.

Upon the availability of sufficient appropriations the Department shall proceed to construct and erect the necessary buildings and improvements.

Powers of Department

Sec. 3. The Department:

(a) shall have exclusive control and management of this facility,

(b) shall appoint such personnel as are necessary to operate and maintain it within the limits of legislative appropriations,

(c) may admit to such facility those mentally ill and mentally retarded persons of this state as in its opinion will benefit therefrom for such period of time as it shall deem proper, and

(d) may contract with community mental health and mental retardation centers and with persons, private organizations and foundations concerned with mental health and mental retardation for use of the facility.

[Acts 1969, 61st Leg., p. 686, ch. 232, eff. May 21, 1969.]

## TITLE 52

### EMINENT DOMAIN

#### Article

- 3264. Procedure.
- 3264a. Eminent Domain by Counties.
- 3264b. Repealed.
- 3264c. Condemnation of Historical Sites.
- 3264d. Texas Woman's University; Eminent Domain.
- 3265. Rule of Damages.
- 3266. General Provisions.
- 3266a. Jurisdiction.
- 3266b. Relocation Assistance Program.
- 3267. How Costs Awarded.
- 3268. Damages Paid First.
- 3269. Practice in Case Specified.
- 3270. Property, How Construed.
- 3271. Property Vested by Judgment.

#### Art. 3264. Procedure

The exercise of the right of eminent domain shall in all cases be governed by the following rules:

1. When real estate is desired for public use by the State or by a county, or a political subdivision of a county, or by a city or town, or by the United States Government, or by a corporation having the right of eminent domain, or by an irrigation district, water improvement district, or a water power control district created by authority of law, the party desiring to condemn the property after having failed to agree with the owner of the land on the amount of damages shall file a statement in writing with the county judge of the county in which the land or a part thereof is situated. It shall describe the land sought to be condemned, state the purpose for which it is intended to be used, the name of the owner, if known, and that the plaintiff and the owner have been unable to agree upon the value of the land or the damages. Where the land lies in two or more counties, in one of which the owner resides, the statement shall be filed in the county of the owner's residence.

2. When such statement is filed with the county judge, he shall, either in term time or vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed upon between the parties.

3. The commissioners shall be sworn to assess said damages fairly and impartially and in accordance with law.

4. The commissioners shall promptly set a time and place for hearing the parties, and the day appointed shall be the earliest practicable day, and the place selected shall be as near as practicable to the property in controversy or at the county seat of the county in which the property is situated.

5. Notice in writing shall be issued by the commissioners to each of the parties interested, notifying them of the time and place selected for the hearing.

6. The notices shall be served upon the parties at least ten (10) days before the day set for the hearing, exclusive of the day of the service, and may be served by any person competent to testify, by delivering a copy of such notice to the party, his agent or attorney.

7. When the property sought belongs to the estate of a deceased person or a minor, or other person laboring under disability, and the estate has a legal representative, the notice shall be served upon such representative.

8. When the property belongs to a non-resident of the State, or if the owner is unknown, or if the residence of the owner is unknown, or the owner secretes himself so that the process of law cannot be served upon him, such notice may be served by publication in the manner provided for such service of citation by publication in other civil cases in the district or county court. When the owner is a non-resident of the State the notice may be served as provided in paragraph six hereof.

9. The person serving notice shall return the original to the commissioners on or before the day set for the hearing, with his return in writing thereon, stating how and when it was served.

10. When service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time and place to which the hearing may be adjourned, proceed to hear the parties.

11. Commissioners shall have the power to compel the attendance of witnesses and production of testimony, administer oaths, and punish for contempt as fully and in the same manner as is provided by law for judges of the county courts.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, § 1; Acts 1961, 57th Leg., p. 203, ch. 105, § 1, eff. Aug. 28, 1961.]

#### Art. 3264a. Eminent Domain by Counties

The right of Eminent Domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is necessary in the construction of jails, courthouses, hospitals, delinquent and dependent schools, poor farms, libraries or for other public purposes, where such purpose is now or

may hereafter be authorized by the Constitution or Statutes of this State.

All such condemnation proceedings shall be instituted under the direction of the commissioners' court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring right of way by railroads. That no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way, easement, etc., is sought to be acquired. In case of appeal, counties shall not be required to give bond, nor shall they be required to give bond for costs.

[Acts 1925, S.B. 84.]

**Art. 3264b. Repealed by Acts 1971, 62nd Leg., p. 3323, ch. 1024, art. 1, § 3, eff. Sept. 1, 1971**

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code. See, now, Education Code, § 65.33.

**Art. 3264c. Condemnation of Historical Sites**

Sec. 1. Whenever any land is required by the State of Texas for the purpose of preserving, restoring or marking any place of historical significance, the Commission of Control for Texas Centennial Celebrations is authorized to purchase such land for such purpose, or failing to agree with the owner on the price therefor, such land may be condemned in the name of this State upon directions of the Commission of Control for Texas Centennial Celebrations, and proceedings shall be instituted against the owner of the land by the Attorney General.

Should the award of damages, in the opinion of the Commission of Control for Texas Centennial Celebrations, be excessive, such award shall not be paid, but the state shall pay the costs of the proceedings and no further action shall be taken.

Sec. 2. The procedure for such condemnation shall be that provided for in Article 3264, Revised Civil Statutes of Texas, 1925, as it is now, or may hereafter exist.

[Acts 1935, 44th Leg., 2nd C.S., p. 1694, ch. 433, § 1.]

**Art. 3264d. Texas Woman's University; Eminent Domain**

Sec. 1. The Board of Regents of the Texas State College for Women of Texas<sup>1</sup> is hereby vested with the power of eminent domain to acquire for the use of said College such lands as may be necessary and proper for carrying out its purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas of 1925, as amended.

Sec. 2. The taking of such property is hereby declared to be for the use of the state. Said Board of Regents of the Texas State College for Women<sup>1</sup> shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioners as provided

in Section 2, of Article 3268. Revised Civil Statutes of Texas of 1925.

[Acts 1943, 48th Leg., p. 208, ch. 127.]

<sup>1</sup>Name changed to Texas Woman's University. See Education Code, § 107.01 et seq.

**Art. 3265. Rule of Damages**

1. The commissioners shall hear evidence as to the value of the property sought to be condemned and as to the damages which will be sustained by the owner, if any, by reason of such condemnation and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by reason of the condemnation of the property, and its employment for the purpose for which it is to be condemned, and according to this rule shall assess the actual damages that will accrue to the owner by such condemnation.

2. When the whole of a tract or parcel of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value of the property in the market where it is located at the time of the hearing.

3. When only a portion of a tract or parcel of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner; whether the remaining portion is increased or diminished in value by reason of such condemnation, and the extent of such increase or diminution and shall assess the damages accordingly.

4. In estimating either the injuries or benefits, as provided in the preceding article, such injuries or benefits which the owner sustains or receives in common with the community generally and which are not peculiar to him and connected with his ownership, use and enjoyment, of the particular parcel of land, shall not be considered by the commissioners in making their estimate.

5. When the commissioners have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due the owner, if any be found to be due, and shall date and sign such decision and file it together with all other papers connected with the case promptly with the county judge.

6. Where a plaintiff after appeal from an award, or after said proceeding has become a case for trial in court, desires to dismiss, abandon the proceedings, or refuse the jury verdict returned by the jury or by a court prior to entry of judgment, said plaintiff shall by motion be heard thereon, and the court hearing the same may as part of the terms of granting such motion, make an allowance to the landowner for reimbursement of his reasonable attorneys' and appraisers' fees, shown to have been incurred, and reimbursement for all necessary expenses incurred by the filing and hearing of such condemnation case to date of such hearing on said motions; provided, however, plaintiff shall not be liable for any such fees or expenses in any case which may be dismissed upon its motion where such case is sub-

sequently refiled, and where the court is advised by plaintiff in connection with any such motion that it intends to refile such case, a reasonable time for such refile shall be allowed. All orders entered hereunder are appealable.

7. The owner of the land who is actually and physically displaced and permanently moves from his dwelling or place of business shall be entitled to, as a separate item of damages, the reasonable moving expenses for personal property other than machinery, equipment, or fixtures, not to exceed \$500.00, when personal property is moved from a place of residence, and not to exceed \$5,000.00, when personal property is moved from a place of business, but the maximum distance of movement to be considered shall be fifty (50) miles. In no event shall such expenses exceed the market value of such personal property; provided, however, that the provisions of this section shall not apply in any condemnation proceeding whether before special commissioners or the court where the owner is entitled to reimbursement for moving expenses under other existing law.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 2293, ch. 772, § 1, eff. Sept. 1, 1969.]

#### Art. 3266. General Provisions

1. When the county judge is disqualified to act in the case, and the parties fail to agree upon a special judge, he shall certify such disqualification upon the petition or statement filed with him, and file it with the county clerk, who shall make a certified copy thereof and of the endorsement thereon and forward the same to the Governor, who shall appoint some person learned in the law to act as special judge, and such special judge when appointed and qualified, shall proceed with the case to its final conclusion, or the parties may agree upon a special judge.

2. The county judge may appoint other commissioners when one or more of those appointed shall fail to serve.

3. Commissioners shall receive for their services an amount fixed by the Commissioners Court, who shall set the fee of the commissioners at any amount they may deem reasonable, but not less than Five Dollars (\$5) for each day they are engaged in the performance of their duties.

(a) In all counties where County Courts at Law, or District Courts are given exclusive or concurrent jurisdiction to try and dispose of eminent domain proceedings and cases, each of such courts shall have jurisdiction to tax or re-tax a reasonable fee of not less than \$10.00 each as a part of the costs of court to each of the Special Commissioners sitting as a tribunal to hear and dispose of the Administrative Proceedings following the filing of a condemnation proceeding with the judge or with the court.

4. The party seeking to condemn the property shall pay the expense of serving notice upon

the owner, but may recover from the owner such expenses when it is decided that the owner shall pay the costs.

5. The commissioners may adjudge the costs against either party, and shall make a statement in writing of all the costs which have accrued and state therein the party against whom such costs have been adjudged, and shall sign such statement and deliver it with the other papers.

6. If either party be dissatisfied with the decision, such party may, on or before the first Monday following the 20th day after the same has been filed with the county judge, file his objection thereto in writing, setting forth the grounds of his objection, and thereupon the adverse party shall be cited and the cause shall be tried and determined as in other civil causes in the county court. In computing the period of time prescribed or allowed by this Subdivision, the last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

7. If no objections to the decision are filed within the time prescribed by Subdivision 6 of this Article, the County Judge shall cause said decision to be recorded in the minutes of the County Court, and shall make the same the judgment of the court and issue the necessary process to enforce the same.

8. In counties in which the jurisdiction of eminent domain cases is in the district courts or county courts at law, the judges and clerks of said courts shall perform the functions in such proceedings as provided by law for county judges and clerks.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 872, ch. 543, § 1; Acts 1955, 54th Leg., p. 537, ch. 166, § 1; Acts 1959, 56th Leg., p. 874, ch. 399, § 1, eff. May 30, 1959; Acts 1961, 57th Leg., p. 203, ch. 105, §§ 2 to 4; Acts 1965, 59th Leg., p. 766, ch. 357, § 1, eff. June 9, 1965; Acts 1967, 60th Leg., p. 1766, ch. 669, § 1, eff. June 17, 1967.]

#### Art. 3266a. Jurisdiction

Sec. 1. The district courts of all counties in the State shall have jurisdiction concurrent with the county courts at law in eminent domain cases. The county courts shall have no jurisdiction in eminent domain cases.

Sec. 2. In all counties in which there is no county court at law with jurisdiction of eminent domain cases, the party desiring to initiate condemnation proceedings shall file its petition with the district judge; and objections to the award of the special commissioners shall be filed in the district court.

Sec. 3. In all counties in which there is one or more county courts at law with jurisdiction in eminent domain cases, the party desiring to initiate condemnation proceedings shall, except where otherwise specifically provided by law, file its petition with the judge of the county court at law; and objections to the award of the special commissioners shall be filed in that county court at law.

Sec. 4. In any eminent domain case pending in the county court at law, whenever the judge of the court determines that the controversy involves a genuine issue of title or any other matter which cannot be fully adjudicated in the county court at law, he shall transfer the case to the district court.

Sec. 5. This Act shall not be construed to alter the provisions of Article 3266, Revised Civil Statutes of Texas, 1925, as amended, except that the court in which a petition is filed to initiate condemnation proceedings, under the provisions of this Act, shall appoint the special commissioners.

Sec. 6. The provisions of this Act shall not apply to any proceeding pending on the effective date of this Act.

[Acts 1971, 62nd Leg., p. 2530, ch. 832, §§ 1 to 6, eff. June 9, 1971.]

#### Art. 3266b. Relocation Assistance Program

Sec. 1. When in the acquisition of real property for a program or project undertaken by any department, agency, or instrumentality of this State or of a political subdivision of this State it becomes necessary that any individual, family, property of a business concern, farm or ranch operation, or nonprofit organization be displaced, they may be paid their moving expenses and relocation payments, provided financial assistance to acquire replacement housing, or allowed rental supplements and compensation for expenses incidental to the transfer of property to the State, all of which payments or expenditures are hereby declared to be an expense and cost of such property acquisition. Each department, agency, or instrumentality of this State or of a political subdivision of this State shall formulate the rules and regulations necessary to carry out the provisions of this section and shall not authorize payments or expenditures in excess of those authorized by or under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Program.

Sec. 1A. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as the direct result of displacement by code enforcement, rehabilitation, or demolition programs shall, for the purposes of this Act, be deemed to have been displaced as the result of the acquisition of real property.

Sec. 2. Each department, agency, or instrumentality of this State or of a political subdivision of this State may provide a relocation advisory service for all individuals, families, business concerns, farm and ranch operations, and nonprofit organizations which shall be compatible with the Federal Uniform Relocation Assistance Advisory program.<sup>1</sup>

Sec. 3. The Comptroller of Public Accounts is hereby authorized to issue a State Warrant on the appropriate account of each State department or agency for all relocation costs and

the costs of administering the relocation assistance program.

[Acts 1969, 61st Leg., p. 133, ch. 45, eff. April 2, 1969; Acts 1971, 62nd Leg., p. 2817, ch. 918, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1625, ch. 580, §§ 1, 2, eff. Aug. 27, 1973.]

<sup>1</sup> See 23 U.S.C.A. § 501 et seq.

#### Art. 3267. How Costs Awarded

The costs of the proceedings before the commissioners and in the court shall be determined as follows, to-wit: If the commissioners shall award greater damages than the plaintiff offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this title, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the plaintiff shall pay all costs; but if the amount awarded by the commissioners as damages or the judgment of the county court shall be for the same or less amount of damages than the amount offered before proceedings were commenced, then the costs shall be paid by the owner of the property.

[Acts 1925, S.B. 84.]

#### Art. 3268. Damages Paid First

If the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

1. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

2. In addition thereto, it shall deposit in said court either (a) a further sum of money equal to the amount of the damages awarded by the commissioners, or (b) a surety bond in an amount equal to the amount of the damages awarded by the commissioners issued by a surety company duly qualified to do business in this State, and which shall be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff, and if a surety bond is deposited in lieu of money, it shall be conditioned so as to secure all damages in excess of the award of the special commissioners, that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the judge of the court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the court below or upon appeal. The State, a county, municipal corporation,

irrigation district, water improvement district or water power control district created under authority of law, shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners or a surety bond in such payment, as provided in this Section 2 hereof.

If the plaintiff deposits money under alternate (a) above, such sum of money shall be deposited or invested by the court in an interest-bearing or noninterest-bearing account with, or in an interest-bearing or noninterest-bearing certificate or security issued by, any state or national bank situated in the State of Texas, as may be requested and designated by the plaintiff. The interest-accruing from such account, certificate or security, if any, shall be paid to the plaintiff.

3. Should it be determined on final decision of the case that the right to condemn the property in question does not exist, the plaintiff shall surrender possession thereof, if it has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the law governing appeals in other cases; except the judgment of the county court shall not be suspended thereby.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 75, ch. 37, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, § 2; Acts 1971, 62nd Leg., p. 2859, ch. 938, § 1, eff. June 15, 1971.]

#### Art. 3269. Practice in Case Specified

When the State of Texas, or any county, incorporated city, or other political subdivision, having the right of eminent domain, or any person, corporation or association of persons,

having such right, is a party, as plaintiff, defendant or intervenor, to any suit in a District Court, in this State, for property or for damages to property occupied by them or it for the purposes of which they or it have the right to exercise such power of eminent domain, or when a suit is brought for an injunction to prevent them or it from going upon such property or making use thereof for such purposes, the Court in which such suit is pending may determine the matters in dispute between the parties, including the condemnation of the property and assessment of damages therefor, upon petition of the plaintiff, cross-bill of the defendant or plea of intervention by the intervenor asking such remedy or relief; and such petition, cross-bill of plea of intervention asking such relief shall not be an admission of any adverse party's title to such property; and in such event the condemnor may assert his or its claim to such property and ask in the alternative to condemn the same if he or it fails to establish such claim; and provided that, if injunctive relief be sought, the Court may grant such relief under the Statutes and Rules of Equity, or may, as a prerequisite for denying such relief, require the party seeking condemnation to give such security as the Court may deem proper for the payment of any damages that may be assessed on such party's pleading for condemnation.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 413, ch. 245, § 1; Acts 1945, 49th Leg., p. 404, ch. 259, § 1.]

#### Art. 3270. Property, How Construed

Except where otherwise expressly provided by law, the right secured or to be secured to any corporation or other plaintiff in this State, in the manner provided by this law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter without a new condemnation.

[Acts 1925, S.B. 84.]

#### Art. 3271. Property Vested by Judgment

Whenever acquired as hereinbefore provided, the judgment of the court shall vest such right in the company acquiring the same.

[Acts 1925, S.B. 84.]



# TITLE 52A

## ENGINEERS

### Art. 3271a. Texas Engineering Practice Act

#### Title of Act

Sec. 1. This Act shall be known and may be cited as "The Texas Engineering Practice Act."

Practicing Privileges; Strict Compliance and Enforcement of Act; Use of Term "Engineer"; Professional Standards and Ethics; Graduate Engineers

Sec. 1.1. In recognition of the vital impact which the rapid advance of knowledge of the mathematical, physical and engineering sciences as applied in the practice of engineering is having upon the lives, property, economy and security of our people and the national defense, it is the intent of the Legislature, in order to protect the public health, safety and welfare, that the privilege of practicing engineering be entrusted only to those persons duly licensed, registered and practicing under the provisions of this Act and that there be strict compliance with and enforcement of all the provisions of this Act, and, in order that the state and members of the public may be able to identify those duly authorized to practice engineering in this state and fix responsibility for work done or services or acts performed in the practice of engineering, only licensed and registered persons shall practice, offer or attempt to practice engineering or call themselves or be otherwise designated as any kind of an "engineer" or in any manner make use of the term "engineer" as a professional, business or commercial identification, title, name, representation, claim or asset, and all the provisions of this Act shall be liberally construed and applied to carry out such legislative intent. In furtherance of such intent and purpose of the Legislature, the practice of engineering is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of the other learned professions in this state. There is specifically reserved to graduates of all public universities recognized by the American Association of Colleges and Universities the right to disclose any college degrees received by such individual and use the word Graduate Engineer on his stationery, business cards, and personal communications of any character.

#### Prohibited Acts and Conduct

Sec. 1.2. From and after the effective date of this Act, unless duly licensed and registered in accordance with the provisions of this Act, no person in this state shall:

- (1) Practice, continue to practice, offer or attempt to practice engineering or any branch or part thereof.

- (2) Directly or indirectly, employ, use, cause to be used or make use of any of the following terms or any combinations, variations or abbreviations thereof as a professional, business or commercial identification, title, name, representation, claim, asset or means of advantage or benefit: "engineer," "professional engineer," "licensed engineer," "registered engineer," "registered professional engineer," "licensed professional engineer," "engineered."

- (3) Directly or indirectly, employ, use, cause to be used or make use of any letter, abbreviation, word, symbol, slogan, sign or any combinations or variations thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice engineering unless such person is duly licensed, registered under and practicing in accordance with the provisions of this Act.

- (4) Receive any fee or compensation or the promise of any fee or compensation for performing, offering or attempting to perform any service, work, act or thing which is any part of the practice of engineering as defined by this Act.

Within the intent and meaning and for all purposes of this Act, any person, firm, partnership, association or corporation which shall do, offer or attempt to do any one or more of the acts or things set forth in numbered paragraphs (1), (2), (3) or (4) of this Section 1.2 shall be conclusively presumed and regarded as engaged in the practice of engineering.

#### Professional Identification

Sec. 1.3. Every person licensed and registered by the Board to engage in the practice of engineering shall in the professional use of his name on any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, or any other such means of professional identification, written or printed, use one of the following legally required identifications: Engineer, Professional Engineer or P. E.

#### Definitions

Sec. 2. As used in this Act the term:

- (1) "Board" shall mean the State Board of Registration for Professional Engineers, provided for by this Act.

- (2) "Certificate of Registration" shall mean a license issued by the State of Texas granting its licensee the privilege of practicing engineering in accordance with the provisions of this Act.

(3) "Engineer," "professional engineer," "registered engineer," "registered professional engineer," or "licensed professional engineer" shall mean a person who has been duly licensed and registered by the Board to engage in the practice of engineering in this state.

(4) "Practice of engineering," or "practice of professional engineering" shall mean any service or creative work, either public or private, the performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, or engineering sciences to such services or creative work.

(5) "Practice engineering" or "practicing engineering" shall mean performing or doing, or offering or attempting to do or perform any service, work, act or thing within the scope of the practice of engineering.

**State Board of Registration for Professional Engineers;  
Appointment of Members; Terms**

Sec. 3. A State Board of Registration for Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of six (6) professional engineers, who shall be appointed by the Governor of the State, with the advice and consent of the Senate. The members of the first Board shall be appointed within ninety (90) days after this Act becomes effective, to serve the following terms: Two (2) members for two (2) years; two (2) members for four (4) years; and two (2) members for six (6) years, from the date of their appointment or until their successors are duly appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office and the same shall be filed with the Secretary of State. Each member of the Board first appointed hereunder shall receive a certificate of registration under this Act from said Board.

**Qualifications of Members of Board**

Sec. 4. Each member of the Board shall be a citizen of the United States and a resident of this State for a period of ten (10) years prior to his appointment, and shall have been engaged in the practice of the profession of engineering for at least ten (10) years, two (2) years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching may be construed as the practice of professional engineering.

**Compensation and Expenses of Board Members**

Sec. 5. Each member of the Board shall receive the sum of Ten (\$10.00) Dollars per day

for each day he is actually engaged in the duties of his office, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses incurred hereunder shall be paid from the "Professional Engineers' Fund" as provided in this law. No money shall ever be paid for the administration of this Act from the General Funds of the State.

**Removal of Members of Board; Vacancies**

Sec. 6. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in this Act.

**Organization and Meetings of the Board**

Sec. 7. The Board shall hold a meeting within thirty (30) days after its members are first appointed, and thereafter shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time as the by-laws of the Board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The Board shall elect or appoint annually from its own membership the following officers: a Chairman, a Vice-Chairman, and a Secretary. A quorum of the Board shall consist of not less than four (4) members.

**Powers of Board; Violations of Rules and Regulations; Actions and Proceedings**

Sec. 8. The Board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for engineers in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act. The violation by any engineer of any provision of this Act or any rule or regulation of the Board shall be a sufficient reason or ground to suspend or revoke the certificate of registration of such engineer. In addition to any other action, proceeding or remedy authorized by law, the Board shall have the right to institute an action in its own name against any individual person to enjoin any violation of any provision of this Act or any rule or regulation of the Board and in order for the Board to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The Board shall not be required to give any appeal bond in any cause arising under this Act. The Attorney General shall represent the Board in all actions and proceedings to enforce the provisions of this Act.

**Defenses in Proceedings for Injunction**

Sec. 8a. In any proceeding for injunction as provided in Section 8 above the defendant

may assert and prove as a complete defense to such action that he was deprived of certification by the Board by action or proceedings of the Board which were

- (1) arbitrary or capricious
- (2) contrary to legal requirements
- (3) conducted without due process of law.

#### Receipts and Disbursements

Sec. 9. The Secretary of the Board shall receive and account for all moneys derived under the provisions of this Act, and shall pay the same weekly to the State Treasurer who shall keep such moneys in a separate fund to be known as the "Professional Engineers' Fund". Such fund shall be paid out only by warrant of the State Comptroller upon the State Treasurer, upon itemized vouchers, approved by the Chairman and attested by the Secretary of the Board. All moneys in the "Professional Engineers' Fund" are hereby specifically appropriated for the use of the Board in the administration of this Act. The Secretary of the Board shall give a surety bond to the Governor of the State of Texas in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars. The premium on said bond shall be paid out of the "Professional Engineers' Fund". The Secretary of the Board shall receive such salary as the Board shall determine in addition to the compensation and expenses provided for in this Act. The Board shall employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the Board is reasonably necessary for the proper performance of its duties under this Act. Under no circumstances shall the total amount of warrants issued by the State Comptroller in payment of the expenses and compensation provided for in this Act exceed the amount of the "Professional Engineers' Fund". Provided further, that the salaries paid herein shall not be in excess of salaries paid for similar work in other departments.

#### Records and Reports

Sec. 10. The Board shall keep a record of its proceedings and register of all applications for registration, which register shall show (a) the name, age and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a certificate of registration was granted; (h) the date of the action of the Board; and (i) such other information as may be deemed necessary by the Board.

The records of the Board shall be available to the public at all times and shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under

seal, shall be admissible in evidence with the same force and effect as if the original was produced.

Annually, as of August 31st, the Board shall submit to the Governor a report of its transaction of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the Board, attested by affidavits of its Chairman and its Secretary.

#### Roster of Registered Engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared by the Secretary of the Board during the month of July of each year, commencing with the month of July, 1938. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

#### General Requirements for Registration

Sec. 12. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a professional engineer, to-wit:

(a) Graduation from an approved course in engineering of four (4) years or more in a recognized school or college approved by the Board as of satisfactory standing, and a specific record of an additional four (4) years or more of active practice in engineering work, of a character satisfactory to the Board, indicating that the applicant is competent to be placed in responsible charge of such work; or

(b) Successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation from an approved four (4) years engineering course; and a specific record of at least eight (8) years of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is competent to be placed in responsible charge of such work.

(c) At any time within five (5) years after this Act becomes effective the Board may accept as evidence that the applicant is qualified for registration as a professional engineer a specific record of twelve (12) years or more of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is qualified to design, to operate, or to supervise construction of engineering work and has had responsible charge of important engineering work for at least five (5) years and provided applicant is not less than thirty-five (35) years of age, and was not practicing professional engineering at the time this Act becomes effective.

(d) After this Act shall have been in effect five (5) years, the Board shall issue

certificates of registration only to those applicants who meet the requirements of Section 12, (a), or (b), or Section 21.

(e) Provided, that no person shall be eligible for registration as a professional engineer who is not of good character and reputation; and provided further, that any engineer licensed under this Act shall be eligible to hold any appointive engineering position with the State of Texas.

(f) In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The satisfactory completion of each year of an approved course in engineering in a school or college approved by the Board as of satisfactory standing, without graduation, shall be considered as equivalent to a year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two (2) years of active practice; provided, however, that no applicant shall receive credit for more than four (4) years of active practice because of educational qualifications. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.

(g) Any person having the necessary qualifications prescribed in this Act to entitle him to registration shall be eligible for such registration though he may not be practicing at the time of making his application.

#### Certification of Engineer-in-Training

Sec. 12a. (a) The term "Engineer-in-Training," as used in this Section shall mean a person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in Sections 12 and 14 of this Act.

(b) The following shall be considered as minimum evidence that the applicant is qualified for certification as an Engineer-in-Training:

(1) A graduate of an approved engineering curriculum of four (4) years or more who has passed the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engineer-in-Training, if he is otherwise qualified; or

(2) An applicant having a high school education and a specific record of eight (8) or more years of experience in engineering work of a grade and character satisfactory to the Board, who passes the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engi-

neer-in-Training, if he is otherwise qualified.

(c) The fee for Engineer-in-Training certification or enrollment shall be established by the Board in an amount not to exceed Ten Dollars (\$10), and shall accompany the application. This fee may be credited toward the Twenty-five Dollars (\$25) necessary for registration.

(d) The certification or enrollment of an Engineer-in-Training shall be valid for a period of twelve (12) years.

#### Applications and Registration Fees

Sec. 13. Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be Twenty-five (\$25.00) Dollars, Fifteen (\$15.00) Dollars of which shall accompany the application, the remaining Ten (\$10.00) Dollars to be paid upon issuance of certificate. When a certificate of qualification issued by the National Bureau of Engineering Registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be Ten (\$10.00) Dollars.

#### Examinations

Sec. 14. When oral or written examinations are required, they shall be held at such time and place as the Board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration in professional engineering. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fees. Re-examination may be granted at any time upon payment of a fee to be determined by the Board.

#### Certificates, Seals

Sec. 15. The Board shall issue a certificate of registration upon payment of registration fee as provided for in this Act, to any applicant, who, in the opinion of the Board, has satisfactorily met all the requirements of this Act. In case of a registered engineer, the certificate shall authorize the practice of professional engineering. Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the Chairman and the Secretary of the Board under seal of the Board. The issuance of a certificate of registration by this Board shall be evidence that the person named there-

in is entitled to all rights and privileges of a registered professional engineer, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend "Registered Professional Engineer". Plans, specifications, plats, and reports issued by a registrant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for any one to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

#### Expirations and Renewals

Sec. 16. Certificates of registration shall expire on the December 31st following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be affected at any time during the month of December by the payment of a renewal fee not to exceed Ten Dollars (\$10.00). The Board is hereby given authority and duty to determine the amount of such renewal fee required to effectively carry out the administration and enforcement of all the provisions of this Act for each coming year on or before December 1st of each year. Failure on the part of any registered engineer to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten per cent (10%) for each month or fraction of a month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

#### Expiration Dates of Certificates of Registration; Proration of Fees

Sec. 16.1. The board by rule may adopt a system under which certificates of registration expire on various dates during the year, and the dates for reinstatement shall be adjusted accordingly. For the year in which the expiration date is changed, certificate renewal fees payable on December 31 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certificate renewal fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

#### Firms, Partnerships, Corporations and Joint Stock Associations

Sec. 17. A firm, or a co-partnership, or a corporation, or a joint stock association may engage in the practice of professional engineering in this State, provided such practice is carried on by only professional engineers registered in this State.

#### Use of Words and Terms of Identification

Sec. 18. No firm, partnership, association, corporation or other business entity shall hold itself out to the public or any member thereof as being engaged in the practice of engineering under any assumed, trade, business, partnership or corporate name or employ, use, cause to be used or make use of in any manner whatsoever any such words or terms as "engineer," "engineering," "engineering services," "engineering company," "engineering, inc.," "professional engineers," "licensed engineer," "registered engineer," "licensed professional engineer," "registered professional engineer," "engineered," or any combinations, abbreviations or variations thereof, or in combination with any other words, letters, initials, signs or symbols on, in or as a part of, directly or indirectly, any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, trade name, assumed name, corporate or other business name unless such firm, partnership, association, corporation or other business entity is actually and actively engaged in the practice of engineering or offering engineering services to the public, and any and all services, work, acts or things performed or done by it which constitute any part of the practice of engineering are either personally performed or done by a registered engineer or under the responsible supervision of a registered engineer.

#### Public Work

Sec. 19. After the first day of January, 1938, it shall be unlawful for this State, or for any of its political subdivisions, for any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer; provided, that nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Three Thousand (\$3,000.00) Dollars. Provided, that this Act shall not apply to any road maintenance or betterment work undertaken by the County Commissioners' Court.

#### Exemptions

Sec. 20. The following persons shall be exempt from the provisions of this Act, provided that such persons are not represented or held out to the public as duly licensed and regis-

tered by the Board to engage in the practice of engineering:

(a) A person not a resident of and having no established place of business in this state, practicing or offering to practice here the profession of engineering, when such practice does not exceed in the aggregate more than sixty (60) days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(b) A person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than sixty (60) days in any calendar year the profession of engineering, if he shall have filed with the Board an application for a certificate of registration and shall have paid the fee required by this Act. Such exemption shall continue only for such time as the Board requires for the consideration of the application for registration; provided, that such a person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(c) An employee or a subordinate of a person holding a certificate of registration under this Act, or any employee of a person exempted from registration by classes (a) and (b) of this Section; provided, his practice does not include responsible charge of design or supervision.

(d) Officers and employees of the Government of the United States while engaged within this state in the practice of the profession of engineering for said Government.

(e) Nothing in this Act shall be construed to apply to persons doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical, electronic or communications equipment and apparatus; nor shall this Act be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated. Provided, however, that nothing in this Act shall be construed as permitting any person other than a licensed professional engineer affixing his signature as such to engineering plans, or specifications.

(f) A person, firm, partnership, joint stock association or private corporation, erecting, constructing, enlarging, altering or repairing, or drawing plans and specifications for: (1) any private dwelling, or apartments not exceeding eight units per building for one story buildings, or apartments not exceeding four units per building and having a maximum height of two stories, or garages or other structures pertinent to such buildings; or (2) private buildings which are to be used exclusively for farm, ranch or agricultural purposes, or used exclusively for storage of raw agricultural commodities; or (3) other buildings, except public buildings included under Section 19 of this Act, having no more than one story and containing no clear span between supporting structures greater than 24 feet on the narrow side and having a total floor area not in excess of five thousand square feet; provided that on unsupported spans greater than 24 feet on such buildings only the trusses, beams; or other roof supporting members need to be engineered or pre-engineered; provided that no representation is made or implied that engineering services have been or will be offered to the public.

(g) Any regular full time employee of a private corporation or other private business entity who is engaged solely and exclusively in performing services for such corporation and/or its affiliates; provided, such employee's services are on, or in connection with, property owned or leased by such private corporation and/or its affiliates or other private business entity, or in which such private corporation and/or its affiliates or other business entity has an interest, estate or possessory right, or whose services affect exclusively the property, products, or interests of such private corporation and/or its affiliates or other private business entity; and, provided further, that such employee does not have the final authority for the approval of, and the ultimate responsibility for, engineering designs, plans or specifications pertaining to such property or products which are to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

(h) Any regular full time employee of a privately owned public utility or cooperative utility and/or affiliates who is engaged solely and exclusively in performing services for such utility and/or its affiliates; provided, that such employee does

not have the final authority for the approval of, and the ultimate responsibility for engineering designs, plans or specifications to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

(i) Qualified scientists engaged in scientific research and investigation of the physical or natural sciences, including the usual work and activities of meteorologists, seismologists, geologists, chemists, geochemists, physicists and geophysicists.

(j) Nothing in this Act shall be construed or applied so as to prohibit or in any way restrict any person from giving testimony or preparing exhibits or documents for the sole purpose of being placed in evidence before any administrative or judicial tribunal of competent jurisdiction.

(k) Nothing in this Act shall apply to any agricultural work being performed in carrying out soil and water conservation practices.

(l) This Act shall not be construed as applying to operating telephone companies and/or affiliates or their employees in respect to any plans, designs, specifications, or services which relate strictly to the science and art of telephony. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.

#### Reciprocity

Sec. 21. The Board may, upon application therefor, and the payment of a fee of Ten (\$10.00) Dollars, issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration, or of any state or territory or possession of the United States, or any country provided that the requirements for the registration of professional engineers under which said certificate of qualification or registration was issued do not conflict with the provisions of this Act and are of a standard not lower than that specified in Section 12 of this Act.

#### Revocations and Re-issuances of Certificates

Sec. 22. The Board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer.

In determining any such charges the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both, at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges the Board and a majority of its members shall find them to be true, it may enter an order revoking the certificate of registration of such registered professional engineer. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a stenographer, then the Board shall employ such stenographer and when so employed he shall be the official stenographer of the Board for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, as under others, a majority of the Board shall constitute a quorum.

When the Board has completed such hearing it shall make a record of its findings and order and shall cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his certificate of registration, in the district court of the county of his residence, or of the county in which the al-

leged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the certificate of registration. Said suit shall be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The suit shall be tried as other civil causes, the burden of proof devolving upon the plaintiff assailing the order of revocation.

The Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three (\$3.00) Dollars shall be made for such issuance.

#### Violations and Penalties

Sec. 23. On or after the first day of January, 1938, any person who shall practice, or offer to practice, the profession of engineering in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall violate any of the provisions of this Act, be fined not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or be confined in jail for a period of not exceeding three (3) months, or both. Each day of such violation shall be a separate offense.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act;

and the Board through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violation of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Invalid Portions

Sec. 24. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and such section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

#### Repeal of Conflicting Legislation with Proviso

Sec. 25. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any law affecting or regulating licensed state land surveyors; and such licensed state land surveyors in performing their duties as such shall not be subject to the provisions of this Act; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed by the State or under its authority.

[Acts 1937, 45th Leg., p. 816, ch. 404; Acts 1961, 57th Leg., p. 590, ch. 282, § 1; Acts 1965, 59th Leg., p. 207, ch. 85, §§ 1 to 7, 8a; Acts 1965, 59th Leg., p. 529, ch. 273, § 1, eff. Aug. 30, 1965; Acts 1973, 63rd Leg., p. 629, ch. 266, § 26, eff. June 11, 1973.]



## TITLE 53

### ESCHEAT

#### Article

- 3272. When Estates Shall Escheat.
- 3272a. Personal Property Subject to Escheat.
- 3272b. Duties of Depositories of Dormant or Inactive Accounts.
- 3273. Petition for Escheat.
- 3274. Citation.
- 3275. Citation by Publication.
- 3276. Claimants May Appear and Plead.
- 3277. If No Person Appears.
- 3278. Issue and Trial.
- 3279. Judgment for State.
- 3280. Costs Against State.
- 3281. Escheated Lands Dedicated to Permanent Free School Fund; Lease or Sale.
- 3282. Writ of Seizure.
- 3283. Claimant Not Served May Sue.
- 3284. Appeal or Writ of Error.
- 3285. Comptroller to Keep Accounts.
- 3286. Heir May Sue.
- 3287. Order in Favor of Claimant.
- 3288. Review of Probate Decree.
- 3289. Suit for Assets.

#### Art. 3272. When Estates Shall Escheat

If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

[Acts 1925, S.B. 84.]

#### Art. 3272a. Personal Property Subject to Escheat

##### Report by Holder of Personal Property

Sec. 1. Every person holding personal property subject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year.

(a) The term "person" as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

(b) The term "personal property" includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State.

(c) The term "subject to escheat" shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner

are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.

**Form of Report**

Sec. 2. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service, maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured beneficiary or annuitant and his last known address according to the life insurance corporation's records.

(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credits which have theretofore been charged off or disposed of in any manner except by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under Ten Dollars (\$10) each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other

charges would be restored under the policy or procedures of the holder upon request by the owner, such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned for which, from the knowledge and records of the undersigned, it appears that the existence and whereabouts of the owner are unknown and have been unknown for more than seven (7) years and on which no claim or act of ownership has been asserted or exercised during the past seven (7) years and on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

(g) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

**Notice and Publication of Lists of Abandoned Property**

Sec. 3. (a) Within sixty (60) days after the date in which the reports specified in Section 2 are received, the State Treasurer shall mail a notice thereof, as hereinafter described, to the Sheriff of the county of the domicile or principal place of business of the holder so reporting. The notice to the Sheriff shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and the last known addresses, if any, of persons listed in the report and entitled to notice as hereinbefore specified; and

(2) A statement that information concerning the amount and description of the property and the name and address of the holder may be obtained by any persons possessing or claiming an interest in the property by addressing an inquiry to the holder so reporting. Within ten (10) days after receipt of said notice, it shall be the duty of the Sheriff to post it on the courthouse door or the courthouse bulletin board, where it shall remain posted for a period of not less than thirty (30) days. Thereafter the Sheriff shall return the notice to the State Treasurer with his certificate showing the date and time of posting required by this Section.

(b) Within 120 days from the filing of the report specified in Section 2, the State Treasurer shall cause notice to be published in an English language newspaper of general circulation in the county in this State in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this State, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business or registered office or agent for service within this State.

(c) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 60 days from the date of the published notice, then not later than 90 days after such publication date the property will be deemed abandoned and escheated to the State and will be placed in the custody of the State Treasurer to whom all further claims must thereafter be directed.

(d) The State Treasurer is not required to publish in such notice any item which is not in excess of Fifty Dollars (\$50) unless he deems such publication to be in the public interest.

(e) Within 120 days from the receipt of the report specified in Section 2, the State Treasurer shall mail a notice to each person having an address listed therein, who appears to be entitled to property of the value of more than Fifty Dollars (\$50) which is reported under this Article.

(f) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the State Treasurer,

er, to whom all further claims must be directed.

(g) The fact that the publication and mailing of the notice required by this Section does not occur within the specified 120 day period shall not affect the right of the owner to claim the property from the holder within 60 days after the date the required notice is published or the duty of the holder to deliver such property to the State Treasurer within 90 days after the date the required notice is published.

#### Payment or Delivery of Abandoned Property

Sec. 4. (a) All personal property reported under the provisions of this Article remaining unclaimed at the expiration of ninety (90) days from the date of publication of the notice required by Section 3 or, if no publication is required, at the expiration of 120 days from the date the report was filed, shall be deemed to be abandoned and shall escheat to the State of Texas.

(b) At the expiration of ninety (90) days from the date of publication of the notice required by Section 3 or, if no publication is required, at the expiration of 120 days from the date the report was filed, every person who has filed a report under this Article shall pay or deliver to the custody of the State Treasurer all property contained in such report which is deemed to be abandoned and escheated to the State, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in Section 3, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(c) Upon the payment or delivery of abandoned property to the State Treasurer, the State shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the State Treasurer under this Article is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(d) In the event that any person fails or refuses to deliver property to the State Treasurer as required by this Section, the Attorney General shall, upon the relation of the State Treasurer, bring an action in the name of the State of Texas to compel delivery of such property. Venue for such suits shall be in any District Court of Travis County, Texas. The fact that such suit may seek to compel the delivery of property from several different holders shall not be grounds for objections as to misjoinder of parties or causes of action. In such suits it shall be shown that the notice required by Section 3 has been given, and the verified report of the holder, unless rebutted, shall, when in-

troduced into evidence, constitute sufficient evidence that such property is abandoned and has escheated and for entry of judgment transferring such property to the State Treasurer.

#### Sale of Abandoned Property

Sec. 5. (a) All abandoned property other than money delivered to the State Treasurer under this Article which has been escheated and the title thereto vested in the State of Texas shall be sold by the State Treasurer to the highest bidder at public sale in whatever city in the State in his judgment affords the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer such property for sale if he considers such bid insufficient. He need not offer any property for sale, if, in his opinion, the probable cost of sale is in excess of the value of the property.

(b) Any sale held under this Section shall be preceded by a single publication of notice thereof at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold, which shall be paid for at the rate provided in Article 29, Vernon's Civil Statutes.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to this Section, shall receive title to the property purchased, free from all claims of the owner or prior holder thereof, and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

#### Claim of Interest in Abandoned Money and Intangible Personal Property Escheated to the State

Sec. 6. (a) Any person claiming an interest in any property paid or delivered to the State Treasurer which has been presumed abandoned and escheated to the State under the provisions of this Article may file a claim to such property with the State Treasurer, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. Provided that any such person claiming an interest in money which has been paid to the State Treasurer by any insurance company may file his claim to such property with the insurance company where such money was originally deposited, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. Upon approval of any such claim the insurance company shall pay the amount of any such claim. Any insurance company paying such a claim may file a claim for reimbursement as provided for in Section 7 of this Act.

(b) No person holding a power of attorney from a claimant who files a claim to such property as hereinabove provided on behalf of any claimant, shall contract for or receive from the claimant for his services an amount in excess of ten per cent (10%) of the value of the property recovered, except that where suit has been instituted as provided in Section 8

hereof, such person may contract for and receive a fee to be fixed by the Court, not to exceed twenty-five per cent (25%) of the value of the property recovered.

#### Determination of Claims

Sec. 7. (a) It shall be the joint duty and responsibility of the State Treasurer and the Attorney General or their duly authorized assistants, to consider the validity of any claim filed under this Article.

(b) The State Treasurer and the Attorney General may hold a hearing and receive evidence concerning any claim filed under the provisions of Section 6 of this Article. If a hearing is deemed necessary in order to determine a claimant's right to receive funds which have escheated to the State, a finding and a decision in writing on each claim filed, stating the substance of the evidence heard and the reasons for such decision, shall be signed by both the State Treasurer and the Attorney General, and shall be a public record. If the claim is allowed as a valid, just and equitable one in the discretion of the above-mentioned officers, it shall be approved and signed by both officers.

(c) If the claim is for money which has been declared abandoned and escheated under the provisions of Section 4 of this Article, and the claim has been allowed, approved, and signed as provided herein, the claim shall be paid by the State Treasurer from the Escheat Expense and Reimbursement Fund. If the claim is for personal property other than money which has been declared to be abandoned and escheated under the provisions of Section 4 of this Article, and the property has not been sold by the State Treasurer as provided in Section 5 of this Article, the State Treasurer shall promptly deliver such property to the claimant. If such property has been sold, as provided in Section 5 of this Article, the full amount of the claim shall be paid to the claimant without deduction for costs of administration, service charges, or notices of any kind whatsoever.

(d) If the claim is for reimbursement by any insurance company for payments made pursuant to Section 6, and if such claim has been allowed, approved, and signed as provided herein, the claim shall be paid to such insurance company by the State Treasurer from the Escheat Expense and Reimbursement Fund.

#### Judicial Action Upon Determination of Claims

Sec. 8. (a) Any person aggrieved by a decision of a claim under the provisions set forth in Section 6 or Section 7 or as to whose claim a final decision has been rendered within ninety (90) days after filing same, may appeal within sixty (60) days from the date of the decision rendered or the lapse of ninety (90) days as the case may be.

(b) The appeal proceeding shall be commenced in any District Court in Travis County, Texas, or in any District Court of Texas in the county wherein the funds claimed were on deposit. The action shall be tried de novo and in

all other respects be governed by the rules of practice in such court. Permission is hereby expressly granted to any and all such claimants to sue the State of Texas, as herein provided.

#### Examination of Records

Sec. 9. At the request of the State Treasurer or the Attorney General, or either of them, the State Auditor, State Comptroller of Public Accounts, State Banking Commissioner, Commissioner of Insurance, Securities Commissioner, the Department of Public Safety, and any District or County Attorney shall assist the State Treasurer and the Attorney General in the enforcement of this Article. The State Treasurer or the Attorney General, or the duly authorized assistants, agents, or representatives of either of them, may, at all reasonable times, examine the books and records of any person to enforce this Article and to determine if the reports (required in this Article) have been made as provided herein. The State Treasurer and the Attorney General, and their authorized assistants, agents or representatives, shall not make public or use any information derived in the course of said examination of said books and records except in the course of any judicial proceeding authorized under the provisions of this Article in an action in which the State of Texas is a party.

#### Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State

Sec. 10. If specific property which is subject to the provisions of this Article and is held for or owed or distributable to an owner whose last known address is in another State by a holder who is subject to the jurisdiction of that State, the specific property is not presumed abandoned in this State and subject to this Article if:

(a) It has been claimed as abandoned or escheated under the laws of such other State; and

(b) The laws of such other State make reciprocal provisions that similar specific property is not presumed abandoned or escheatable by such other State when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

#### Foreign Owners

Sec. 10a. This Article shall not apply to any bank account held within this State where the last known owner was a citizen and resident of another country.

#### Unclaimed Property Held by the Federal Government

Sec. 11. In the event of the enactment by the Federal Government of laws providing for the discovery of unclaimed property held by the Federal Government, and for the furnishing or availability of such information to the States, the State Treasurer is hereby authorized to compensate the Federal Government for the proportionate share of the actual and

necessary cost of examining records, and the State of Texas shall hold the Federal Government harmless from later claims of owners of unclaimed property delivered to the State Treasurer by the Federal Government. Such compensation shall be paid from the Escheat Expense and Reimbursement Fund.

#### Rules and Regulations

Sec. 12. The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this Article.

#### Penalties

Sec. 13. Any person who wilfully fails to file a report required by this Article, or who refuses to permit examinations of records as provided in this Article, or who deducts from or makes a service charge against an inactive or dormant account or other deposit of funds, shall be punished by a fine of not less than Five Hundred Dollars (\$500), nor more than One Thousand Dollars (\$1,000), or by confinement for not more than six (6) months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100) for each day of such failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

#### Effect on Provisions Relating to Escheat of Estates of Decedents

Sec. 14. The provisions of this Article 3272a are in addition and supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Articles 3273 to 3289, inclusive, Title 53, Revised Civil Statutes of Texas, 1925, which provide for the escheat of estates of decedents.

#### Escheat Expense and Reimbursement Fund

Sec. 15. There is hereby created a revolving fund to be known as the "Escheat Expense and Reimbursement Fund" in the amount of One Hundred Thousand Dollars (\$100,000) to be held by the State Treasurer, one half (1/2) of which shall be maintained for reimbursement of persons who obtain decisions or judgments in accordance with Sections 6 and 7 of this Article that they are entitled to escheated funds, and one half (1/2) of which shall be used by the Treasurer and the Attorney General, with expenditures and vouchers approved by both of such officers, for the purpose of enforcement of the provisions of this Title, including the expense of publishing of notices, examinations, travel, court costs, witness fees, employment of such additional assistants and other personnel as may be necessary for such purposes in either of their offices at salaries not to exceed the rate paid other employees for similar services, and all other expenses necessary for enforcement of this Title. The Governor is authorized to transfer to the Escheat Expense and Reimbursement Fund sums not to exceed Twenty Thousand Dollars (\$20,000) from any

appropriations made to the Executive Department to be used and expended for the purposes above set out. Thereafter, such sums of money as may be necessary to maintain the Escheat Expense and Reimbursement Fund in the sum of One Hundred Thousand Dollars (\$100,000) shall be deposited to such Fund from funds escheated to the State pursuant to the provisions of this Act, prior to any deposit to the General Revenue Fund for such escheated funds. The Escheat Expense and Reimbursement Fund shall be subject to audit by the State Auditor and to appropriation by the Legislature for the purpose of enforcing this Title.

**Prior Reports Under this Article**

Sec. 16. (a) Personal property reported under this Article prior to the effective date of this Act, and which is not the present subject of a judicial proceeding to declare such property abandoned and escheated, shall, upon the giving of the notice required by Section 3 as hereby amended, be paid or delivered to the State Treasurer in accordance with Section 4 as hereby amended. Provided that, if the notice specified in Section 3(a) has heretofore been given it shall not be necessary to give such notice again.

(b) In any pending judicial proceeding to declare the abandonment and escheat of personal property reported under this Article prior to the effective date of this amendment, the defendant holder of such property may pay or deliver same to the custody of the State Treasurer. Provided that the citation by publication made at the institution of such judicial proceeding shall be deemed to be in lieu of any notice required to be given under Section 3(b) or 3(e). Upon the certification by the State Treasurer of such delivery, the Attorney General shall move to dismiss such defendant holder from the court action.

(c) In those instances where a defendant shall fail or refuse to comply with Subsection (b) of this Section, the court action then pending shall be considered to be an action to compel delivery of the abandoned and escheated property to the custody of the State Treasurer. The State shall have leave to amend its petition so as to conform the allegations and prayer to the provisions of this Act. Notwithstanding any provisions of the Rules of Civil Procedure to the contrary, all Exhibits attached to the petition as originally filed shall become Exhibits to the petition as amended and the contents of said Exhibits may be incorporated in such pleadings by reference. In these suits it shall not be necessary for the State to allege or prove compliance with Section 3(b) or 3(e), but in lieu thereof it shall be shown that notice has been posted and citation published in compliance with Section 3 and Section 4(d) of House Bill No. 5, Acts of the 57th Legislature, First Called Session, 1961, Page 49, Chapter 21,<sup>1</sup> as such Sections read prior to the effective date of this amendment, and the verified report of the holder, unless rebutted, shall, when introduced in evidence, constitute suffi-

cient evidence that the property is abandoned and has escheated and for entry of judgment transferring such property to the State Treasurer. The judgment entered shall accord the defendant the full protection of the provisions of this Article with regard to the property decreed abandoned.

[Acts 1961, 57th Leg., 1st C.S., p. 49, ch. 21, § 1; Acts 1965, 59th Leg., p. 1230, ch. 565, §§ 1 to 5, eff. June 17, 1965.]

<sup>1</sup> Sections 3 and 4(d) of this article.

**Art. 3272b. Duties of Depositories of Dormant or Inactive Accounts**

**Duty; Definitions**

Sec. 1. Every depository holding dormant deposits or inactive accounts of depositors or owners whose existence and whereabouts are unknown to the depository, shall preserve intact the deposits and accounts so long as they remain in a dormant or inactive status.

a. The term "depository" as used in this Article means any bank, savings and loan association, banking institution or organization which receives and holds for others deposits of money or its equivalent in banking practice or other personal property in this State, or in other States for residents last known to have resided in this State.

b. The terms "dormant deposits" and "inactive accounts" mean those demand, savings, or other deposits of money or its equivalent in banking practice, including but not limited to sums due on certified checks, dividends, notes, accrued interest, or other evidences of indebtedness, held by a depository for repayment to the depositor or creditor, or his order, which on or after the effective date of this Article have continuously remained inactive for a period of more than one (1) year without credit or debit whatsoever through the act of the depositor, either in person or through an authorized agent other than the depository itself. "Dormant deposits" and "inactive accounts" lose their status as such when a deposit is made by the depositor, or a check is drawn or withdrawal is made therefrom by such depositor, either in person or through an authorized agent other than the depository itself.

**Conversion or Reduction Prohibited**

Sec. 2. It shall be unlawful for any depository to transfer, convert or reduce any dormant deposit or inactive account to the profits or assets of the depository, either through book transfer, assessments, service charges or any other procedure so long as the deposit or account remains in a dormant or inactive status. This shall not apply to the charges hereinafter specifically authorized for efforts to locate the depositors.

**Advertising for Owners**

Sec. 3. When, on or after the effective date of this Article, dormant deposits or inactive accounts have remained in such condition for

more than seven (7) years, and the depository does not know the whereabouts of the depositors or any owners thereof, the depository, during the first month of May following the seven (7) year period, shall cause to be published once in a newspaper, published in the city or county in which the depository is located, a notice entitled "Notice of the names of persons appearing as the owners of unclaimed amounts held by (name and address of depository)" which shall list the names, in alphabetical order, and the last known address, if any, of such missing depositors, but not the amounts of such deposits. Newspapers eligible for such publications shall be those defined in Section 2 of Article 28a, Revised Civil Statutes of Texas, 1925, as amended, and if no such newspaper is published in the county of a depository, publication shall be made in a newspaper published in an adjoining county.

Annually thereafter during the month of May of each year the depository shall again publish in like manner the names of such depositors or creditors whose deposits or accounts have not been reported and delivered to the State in accordance with Section 4 hereof, if the whereabouts of any owner thereof still remains unknown to the depository and their deposits or accounts still remain in a dormant or inactive status as herein defined.

Each of such publications shall state that the unclaimed amounts will be paid upon proof of ownership at the office of the depository within nine (9) months, and that if unclaimed thereafter they may be subject to report to and conservation by the State Treasurer in accordance with Article 3272b. Duplicate copies of each publication shall be mailed to the State Treasurer together with sworn proof of publication, and the publication thereof shall constitute notice on the part of the depository and the State that the listed deposits or accounts may be subject to the provisions of this Article. The depository shall certify under oath of the subscribing officer that the attached list is a full and complete list of the names of all depositors and creditors for whom dormant deposits or inactive accounts have been held for more than seven (7) years and whose existence and whereabouts are unknown to the depository, and that such listed depositors and creditors have not asserted any claim or exercised any act of ownership with respect to their deposits or accounts during the past seven (7) years.

Newspapers shall charge for such publications not to exceed the rate for legal notice publications fixed in Article 29, Revised Civil Statutes of Texas, 1925, as amended. The amount paid to a newspaper for such publications may be charged equally against the accounts owing to the persons whose names are published.

#### Report to State Treasurer

Sec. 4. On or before May 1st of the year following the first publication required by this Article, the depository shall submit in dupli-

cate copies a report to the State Treasurer listing the names of all such depositors or creditors whose names were published, whose whereabouts and the whereabouts of any owner of such deposit or credit still remain unknown, and each of whose deposits or accounts are Twenty-five Dollars (\$25) or less and still remain in a dormant or inactive status. Under the same conditions the depository may include in the report the same information with respect to any deposit or account in excess of Twenty-five Dollars (\$25) if it should conclude that further cost and effort to locate the depositor or creditor would be unwarranted. Such report shall set forth in alphabetical order the name and last known address of the depositor or creditor, the date and amount appearing to be due each depositor or creditor when the account first became dormant or inactive, or on January 1, 1959, whichever date is later, the amount credited to such account at the time of the report, the date of the last transaction with the depositor or creditor, and its identification number, if any. If the amount then credited to an account is less than the amount of the initial dormant deposit or inactive account, except for its share of publication costs, the reason for such reduction shall be stated.

The subscribing officer shall certify under oath that the report is a complete and correct statement of all dormant deposits and inactive accounts held by the depository subject to the reporting provisions of Section 4 of Article 3272b; that the existence and whereabouts of the listed depositors or creditors are unknown to the depository; and that the listed depositors or creditors have not asserted any claim or exercised any act of ownership with respect to the reported accounts during the past seven (7) years.

Together with the foregoing report, the depository shall deliver to the State Treasurer a sum equal to the total amount of the accounts listed in the report, and the State Treasurer shall sign a receipt therefor and shall assume custody thereof. The State shall be responsible for the safekeeping thereof, and any depository delivering such deposits or accounts to the State Treasurer under this Act is relieved of all liability for any claim which then exists or which may thereafter arise or be made in respect to the property.

The depository shall also attach a list certified under oath of the subscribing officer of the names of the depositors and creditors of all other dormant deposits or inactive accounts in excess of Twenty-five Dollars (\$25) which were advertised under Section 3 hereof, but which have been retained by the depository for further advertising, and the depository shall be responsible for the safekeeping thereof until such sums are finally delivered to the owners or to the State Treasurer under Section 4 of this Article, or until otherwise directed by escheat proceedings filed under other Articles of this Title.

#### State Conservator Fund

Sec. 5. All funds received by the State Treasurer under the provisions of this Article or from the escheat of any deposit, credit, account or other property held by any bank or other institution covered by Section 1(a) hereof shall be deposited into a separate fund to be known as the "State Conservator Fund," from which there shall be set aside and maintained a revolving expense fund of Twenty-five Thousand Dollars (\$25,000) for the purpose of paying expenses incurred by the State Treasurer in the enforcement of the provisions of this Article, including the expense of publications, forms, notices, examinations, travel, and employment of necessary personnel; and thereafter any amounts remaining unpaid to owners shall be transferred to the Available School Fund; provided that the State Conservator Fund shall never be reduced below Two Hundred and Fifty Thousand Dollars (\$250,000). This sum shall remain available for payments to those who may at any time in the future establish their ownership or right as herein provided to any deposit or account delivered to the State Treasurer under this Act. The moneys in such fund over Fifty Thousand Dollars (\$50,000) shall be invested from time to time by the State Treasurer in investments which are approved by law for the investment of any State funds, and the income thereof shall be and become a part of the said State Conservator Fund. The expense fund of Twenty-five Thousand Dollars (\$25,000) is hereby appropriated to the State Treasurer for the purposes above stated for the biennium ending August 31, 1963.

The State Banking Commissioner shall transfer to the State Treasurer for deposit in the State Conservator Fund all dormant deposits and other funds formerly owned by or deposited in liquidated depositories which have been held by the Commissioner for more than twenty (20) years and of which the whereabouts of the depositors, creditors or owners have been unknown to him for more than twenty (20) years. Upon delivery, together with a certificate of such facts under oath of the State Banking Commissioner, the funds shall be subject to conservation and disposition under the terms of this Article. The State Banking Commissioner shall deliver to the State Treasurer a record of the names of the liquidated depositories, and the names and last known addresses of the depositors and creditors and the amounts of the deposits, credits, or other funds.

The State Treasurer shall keep a record of the name and last known address of each depositor or creditor listed on the depository reports and the amount of each depositor account. The record shall be available for inspection at all reasonable business hours by anyone satisfying the State Treasurer that he has an interest or possible interest therein.

#### Future Claims of Owners

Sec. 6. Any person claiming an interest in any property delivered to the State and depos-

ited in the State Conservator Fund may file a claim thereto and receive payment thereof from the State Conservator Fund by following the procedures set out in Sections 6 and 7 of Article 3272a. All of such claims, determinations thereof, and all other rights, fees, procedures, and actions with respect thereto, shall be governed by and conducted in accordance with the applicable provisions of Sections 6, 7 and 8 of Article 3272a, the same as if the delivery of funds had been made to the State Treasurer under that Article, except that payments to owners shall be made from the State Conservator Fund.

Provided, however, that any person claiming an interest in money which has been paid to the State Treasurer by a depository under this Article may file his claim with the depository, which claim shall be filed on forms and through procedures prescribed by the State Treasurer. If the depository finds in good faith that such claim is valid, the depository may pay the same, and if the amount is One Hundred Dollars (\$100) or less, the State Treasurer shall reimburse the depository upon receipt of a written statement subscribed and sworn to by an officer of the depository, listing the name and address of the person to whom payment was made and stating that the depository believes in good faith that such claim was and is valid. If the amount is in excess of One Hundred Dollars (\$100), the claim and any supporting affidavit or evidence thereof shall be examined, approved, and signed by the State Treasurer and the Attorney General, after which reimbursement shall be made to the depository. Any such reimbursements shall be made by the State Treasurer out of the State Conservator Fund.

#### Presumption

Sec. 7. Any person or persons who shall have dormant deposits or inactive accounts held by any depository for seven (7) years or more, whose existence and whereabouts are reported under oath to be unknown to the depository after advertising therefor, and who shall not have asserted any claim thereto or exercised any act of ownership thereof for a period of seven (7) years, shall be presumed, unless shown to the contrary, to have died intestate and without heirs. The sworn report of any depository filed under this Article or any evidence thereof adduced under oath shall constitute prima facie evidence of the facts stated therein.

#### Rules and Regulations

Sec. 8. The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this Act, provided such rules and regulations shall not become operative until and unless they have been filed with the Secretary of State as provided by law. The State Treasurer is hereby authorized to examine the records of any depository to determine that this law is being complied with.



## Penalties

Sec. 9. Any depository of person who wilfully fails to publish the list of depositors or creditors, or who fails to file a report as required by this Article, or who violates any provision of this Article, shall be punished by a fine of not less than Five Hundred Dollars (\$500), nor more than One Thousand Dollars (\$1,000), or by confinement for not more than six (6) months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100) for each day of such failure or refusal or other violation, said civil penalties to be collected by suit in a district court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

## Article Supplementary

Sec. 10. The provisions of this Article 3272b are in addition and supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Articles 3272a to 3289, inclusive, Title 53, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1962, 57th Leg., 3rd C.S., p. 5, ch. 3, eff. May 3, 1962.]

## Art. 3273. Petition for Escheat

In addition to any special proceedings provided in Article 3272a, when the Attorney General or the District or Criminal District or County Attorney shall be informed, or have reason to believe, that any estate, real or personal, is in the condition specified in the preceding Article 3272, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons claiming the estate, if any such are known, and the facts or circumstances in consequence of which such estate is claimed to have escheated, praying that such property be escheated and for a writ of possession therefor in behalf of the State. If filed by any officer other than the Attorney General, he shall notify the Attorney General in writing and forward a copy of the petition in order that the Attorney General may participate in behalf of the State if he so elects, provided that all actions brought hereunder shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions and the petition shall not be subject to objections as to misjoinder of parties or causes of action. This procedure shall be supplementary to and cumulative of any actions or procedures authorized in Article 3272a with respect to escheat of personal property and either procedure may be followed in applicable cases.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., 1st C.S., p. 49, ch. 21, § 2.]

## Art. 3274. Citation

The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such

estate and for each other person required by this title to be cited.

[Acts 1925, S.B. 84.]

## Art. 3275. Citation by Publication

The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits.

[Acts 1925, S.B. 84.]

## Art. 3276. Claimants May Appear and Plead

All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition.

[Acts 1925, S.B. 84.]

## Art. 3277. If No Person Appears

Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law.

[Acts 1925, S.B. 84.]

## Art. 3278. Issue and Trial

If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

[Acts 1925, S.B. 84.]

## Art. 3279. Judgment for State

If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possession shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same.

[Acts 1925, S.B. 84.]

## Art. 3280. Costs Against State

If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury.

[Acts 1925, S.B. 84.]

**Art. 3281. Escheated Lands Dedicated to Permanent Free School Fund; Lease or Sale**

All lands heretofore or hereafter escheated to the State of Texas by provisions of this Title are hereby dedicated, appropriated and set apart to the Permanent Free School Fund of the State of Texas. The Clerk of the District Court in which any judgment shall be rendered for the State escheating real estate to the State shall, within ninety (90) days of the date of said judgment, forward the Commissioner of the General Land Office at Austin, Texas, a certified copy of said judgment of escheat. The Clerk of said Court shall likewise notify the Commissioner of the General Land Office of any appeal that may be taken in said case. Upon receipt of a certified copy of the judgment escheating real estate to the State from which no appeal is taken, or upon receipt of a certified copy of notice of affirmance of any judgment escheating lands to the State, from which an appeal was taken, the Commissioner of the General Land Office shall list said lands as escheated permanent free school lands. The Commissioner of the General Land Office may lease said lands for grazing purposes under existing laws relating to the leasing for grazing purposes of unsold school lands. The Commissioner of the General Land Office may lease said lands for agricultural, residential, business or other purposes for a term of not to exceed two (2) years, said rental to be payable in money; the amount of said rental and all other terms of the lease to be fixed by the Commissioner of the General Land Office. Any escheated permanent free school lands shall be subject to lease for oil and gas development or subject to other mineral development under Statutes governing the leasing for mineral purposes all other unsold permanent free school lands. Any escheated permanent free school lands may be sold by the Commissioner of the General Land Office for not less than one-tenth of the purchase price in cash and the balance of said purchase price payable in nine equal annual installments, said deferred installments to bear interest at the rate of six (6) per cent per annum. Any lands so sold shall be sold to the highest bidder as are other public free school lands but no escheated lands shall be sold at a price of less than Two Dollars and Fifty Cents (\$2.50) per acre. All sales of escheated permanent free school lands shall be with a reservation to the State of all the minerals in the land in favor of the Permanent Free School Fund. All sums received from the leasing, mineral developments, or sale of escheated lands shall be deposited in the Permanent School Fund of Texas. The Commissioner of the General Land Office is authorized to adopt such regulations as he deems necessary to carry out this Article. Said regulations or forms adopted shall be approved by the Attorney General.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 3rd C.S., p. 112, ch. 60, § 1.]

**Art. 3282. Writ of Seizure**

If the property recovered be personal property, a writ shall issue to the sheriff commanding him to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury.

[Acts 1925, S.B. 84.]

**Art. 3283. Claimant Not Served May Sue**

When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought.

[Acts 1925, S.B. 84.]

**Art. 3284. Appeal or Writ of Error**

Any party who has appeared in such proceedings, and also the Attorney General or the Criminal District or District or County Attorney on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., 1st C.S., p. 49, ch. 21, § 3.]

**Art. 3285. Comptroller to Keep Accounts**

The Comptroller shall keep an account of money paid into the treasury, and of lands vested in the State under any provision of this title.

[Acts 1925, S.B. 84.]

**Art. 3286. Heir May Sue**

If any person appears after the death of the testator or intestate and claims any money or property paid into the treasury under this Title, as heir, or devisee, or legatee thereof, he may file a petition against the State in the District Court of Travis County, Texas, stating the nature of his claim and praying that such money be paid to him. A copy of such petition shall be served on the Attorney General of this State at least twenty (20) days previous to the return day of the process. Any such suit shall be instituted within four (4) years of the date of the final judgment escheating such property to the State, and not thereafter.

[Acts 1925, S.B. 84; Acts 1934, 43rd Leg., 3rd C.S., p. 112, ch. 60, § 2.]

**Art. 3287. Order in Favor of Claimant**

If the court shall find that such person is entitled to recover such money as heir, devisee, legatee, or legal representative, it shall make an order directing the Comptroller to issue his warrant on the Treasury for the payment of the same, but without interest or costs; a copy

of which order under the seal of the court shall be sufficient voucher for issuing such warrant.

[Acts 1925, S.B. 84.]

**Art. 3288. Review of Probate Decree**

When an estate owning property claimed by the State to be subject to escheat, shall have been administered in a probate court in this State, the State may have the judgment of such probate court reviewed in the district court, upon petition alleging that such admin-

istration was obtained by fraud or mistake of fact, and the case shall be tried in the manner prescribed by law for the revision and correction of any decree of the probate court.

[Acts 1925, S.B. 84.]

**Art. 3289. Suit for Assets**

All suits brought for the collection of the assets turned over to the Treasurer, under this title, shall be brought in the name of the State of Texas.

[Acts 1925, S.B. 84.]

**TITLE 54**

**ESTATES OF DECENDENTS [Repealed]**

**Arts. 3290 to 3700. Repealed by Acts 1955, 54th Leg., p. 88, ch. 55, § 434, eff. Jan. 1, 1956**

See, now, Probate Code in Volume 2.

**Arts. 3701 to 3703. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1).**

See, now, Rules of Civil Procedure, rules 333 to 335.

# TITLE 55

## EVIDENCE

### 1. WITNESSES AND EVIDENCE

#### Article

- 3704 to 3707. Repealed.  
3708. Fees of Witnesses.  
3709. Repealed.  
3710. Privileged from Arrest.  
3711 to 3712. Repealed.  
3712a. Interpreters for Deaf or Deaf-Mute Persons.  
3713. Repealed.  
3714. Color or Interest Does Not Disqualify.  
3715. Husband or Wife Not Disqualified.  
3715a. Clergyman-Penitent Privilege.  
3716. In Actions By or Against Executors, etc.  
3717. Witness Not Disqualified.  
3718. Printed Statutes.  
3719. Certified Copies of Acts, etc.  
3720. Copies of Records of Officers and Courts.  
3721. Record of Surveys.  
3722. Copies and Certificates from Certain Officers.  
3723. Notarial Acts and Copies Thereof.  
3724. Transcript from Comptroller's Office.  
3725. Copies of Certain Ancient Instruments.  
3726. Recorded Instruments Admitted Without Proof.  
3726a. Certain Documents Admitted in Suits Involving Title to Real Estate or Seeking a Declaration of Heirship.  
3726b. Defects Not Affecting Admissibility in Evidence of Certain Instruments.  
3727. Old Record Books Declared Valid.  
3728. Copies of Transcribed Records.  
3729. Certain Abstracts.  
3730. Certified Copy of Instrument Sued On.  
3731. Certified Copies From Heads of Departments.  
3731a. Official Written Instruments, Certificates, Records, Returns, and Reports; Foreign Laws.  
3731b. Photographic or Photostatic Copies of Business and Official Records; Admissibility.  
3731c. Photographic or Photostatic Copies of Written Instruments; Use in Judicial or Administrative Proceedings.  
3732. Assessment or Payment of Taxes.  
3733. Rate of Interest Presumed.  
3734. Repealed.  
3734a. Proof of Execution of Written Instrument Offered in Evidence.  
3735. Appointment and Qualification of Executor, etc.  
3736. Repealed.  
3737. Records of Corporation.  
3737a. Records of Closed Bank as Evidence.  
3737b. Evidence of Handwriting by Comparison.  
3737c. Certified Copies of Records or Instruments Pertaining to Oil Industry.  
3737d. Repealed.  
3737d-1. Court Interpreters in Certain Judicial Districts in Counties Bordering International Boundary.  
3737e. Memorandum or Record of Act, Event or Condition; Absence of Memorandum of Record as Evidence.  
3737f. Personal Injury Action; Exclusion of Evidence of Settlement of Property Damage and Medical Expense Claims.

### 2. DEPOSITIONS

- 3738, 3739. Repealed.  
3740. Notice by Publication.

#### Article

- 3741 to 3745. Repealed.  
3746. Officers Authorized to Execute.  
3747. Repealed.  
3748. May Be Attached.  
3749 to 3756. Repealed.  
3757. Power of Officer Taking Depositions.  
3758 to 3769. Repealed.  
3769a. Execution of Commission Issued by Court of Foreign State.  
3769b. Contempt in Disobeying Writ.  
3769c. Repealed.

### 1. WITNESSES AND EVIDENCE

**Art. 3704 to 3707. Repealed by Rules of Civil Procedure (Acts 1939, 4th Leg., p. 201, § 1)**

**Art. 3708. Fees of Witnesses**

Witnesses shall be allowed a fee of one dollar for each day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk. Such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs.

[Acts 1925, S.B. 84.]

**Art. 3709. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3710. Privileged from Arrest**

Witnesses shall be privileged from arrest, except in cases of treason, felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode.

[Acts 1925, S.B. 84.]

**Art. 3711 to 3712. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3712a. Interpreters for Deaf or Deaf-Mute Persons**

(a) In all civil cases or in the taking of depositions, where a party or a witness is a deaf or deaf-mute person, he shall have the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court.

(b) In any case where an interpreter is required to be appointed by the court under this Act, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding 10 feet from and in full view of the deaf or deaf-mute person.

(c) The interpreter appointed under the terms of this Act shall be required to take an oath that he will make a true interpretation to the deaf or deaf-mute person of all the proceedings of the case in a language that he understands; and that he will repeat the deaf or deaf-mute person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(d) Interpreters appointed under this Act shall be paid not less than \$15 nor more than \$50 a day, at the discretion of the judge presiding. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees. All the cost of the services of the interpreters in civil cases shall be taxed as cost of court.

[Acts 1967, 60th Leg., p. 194, ch. 105, § 1, eff. Aug. 28, 1967.]

**Art. 3713. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3714. Color or Interest Does Not Disqualify**

No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried.

[Acts 1925, S.B. 84.]

**Art. 3715. Husband or Wife Not Disqualified**

The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

[Acts 1925, S.B. 84.]

**Art. 3715a. Clergyman-Penitent Privilege**

No ordained minister, priest, rabbi or duly accredited Christian Science practitioner of an established church or religious organization shall be required to testify in any action, suit, or proceeding, concerning any information which may have been confidentially communicated to him in his professional capacity under such circumstances that to disclose the information would violate a sacred or moral trust, when the giving of such testimony is objected to by the communicant; provided, however, that the presiding judge in any trial may compel such disclosure if in his opinion the same is necessary to a proper administration of justice.

[Acts 1967, 60th Leg., p. 1005, ch. 435, § 1, eff. Aug. 28, 1967.]

**Art. 3716. In Actions By or Against Executors, etc.**

In actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or state-

ment by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent.

[Acts 1925, S.B. 84.]

**Art. 3717. Witness Not Disqualified**

No person shall be incompetent to testify in civil cases on account of his religious opinion, or for the want of any religious belief, or by reason of having been convicted of a felony.

[Acts 1925, S.B. 84.]

**Art. 3718. Printed Statutes**

The printed statute books of this State, of the United States, of the District of Columbia, or of any State or territory of the United States or of any foreign government, purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained.

[Acts 1925, S.B. 84.]

**Art. 3719. Certified Copies of Acts, etc.**

A certified copy under the hand and seal of the Secretary of State of this State, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof.

[Acts 1925, S.B. 84.]

**Art. 3720. Copies of Records of Officers and Courts**

Copies of the records and filed papers of all public officers and custodians of records of minutes of boards, etc., and courts of this State, certified to under the hand, and the seal if there be one, of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible. Translated copies of all records in the land office certified to under the hand of the translator, and the Commissioner of the General Land Office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence.

[Acts 1925, S.B. 84.]

**Art. 3721. Record of Surveys**

Each county surveyor shall record in a well-bound book each survey in the county for which he was elected, with the plat thereof that he may make, whether private or official, and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any court of this State.

[Acts 1925, S.B. 84.]

**Art. 3722. Copies and Certificates from Certain Officers**

The Secretary of State, Attorney General, Land Commissioner, Comptroller, Treasurer

Adjutant General, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, and State Librarian shall furnish any person applying for the same with a copy of any paper, document or record in their offices, and with certificates under seal certifying to any fact contained in the papers, documents or records of their offices; and the same shall be received in evidence in all cases in which the originals would be evidence.

[Acts 1925, S.B. 84.]

**Art. 3723. Notarial Acts and Copies Thereof**

All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in any court of this State.

[Acts 1925, S.B. 84.]

**Art. 3724. Transcript from Comptroller's Office**

In suits by the State against any officer or agent thereof, on account of any delinquency or failure to pay to the State any money, a transcript from the papers, books, records and proceedings of the office of the Comptroller purporting to contain a true statement of accounts between the State and such party, authenticated under the seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly. All copies of bonds, contracts or other papers relating to, or connected with, any account between the State and an individual, sued as aforesaid, when certified by the Comptroller to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof.

[Acts 1925, S.B. 84.]

**Art. 3725. Copies of Certain Ancient Instruments**

Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited.

[Acts 1925, S.B. 84.]

**Art. 3726. Recorded Instruments Admitted Without Proof**

Every instrument of writing which is permitted or required by law to be recorded in the office of the Clerk of the County Court, and

which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this State in force at the time of its registration, or at the time it was proved or acknowledged; or every instrument which has been, or hereafter may be actually recorded for a period of ten (10) years in the book used by said Clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State, without the necessity of proving its execution; provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten (10) years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three (3) days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him, shall, within three (3) days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten (10) years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer who took such proof or acknowledgment, is not in form or substance such as required by the laws of this State; and said instrument shall be given the same effect as if it were not so defective. If the land to which the instrument pertains is situated within the county in which the suit is pending, the party desiring to offer in evidence recorded instruments, may do so, without producing the originals thereof and without accounting for his failure to produce such originals, by filing a list of such instruments at least ten (10) days before the trial, giving the volume and the page wherein such instruments are recorded; and unless an affidavit is filed by the opposite party at least three (3) days before trial, stating that he believes such instruments of writing to be forged, then the party filing such lists of instruments shall be entitled to read the same from the record. A copy of a list of such instruments shall be filed with the Clerk of the County Court at least three (3) days before the trial of a case and said County Clerk shall on the day of the trial deliver, or cause to be delivered, to the Court in which the case is pending, all of the records requested, and said Clerk shall not charge for the use of said records.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 198, ch. 73, § 1; Acts 1939, 46th Leg., p. 325, § 1; Acts 1941, 47th Leg., p. 476, ch. 299, § 1.]

**Art. 3726a. Certain Documents Admitted in Suits Involving Title to Real Estate or Seeking a Declaration of Heirship**

Sec. 1. (a) The following documents, when offered in a suit which involves the title to real estate or which seeks a declaration of heirship under Section 48, Texas Probate Code, are admissible in evidence if they concern the family history, genealogy, marital status, or heirship of a decedent:

(1) a final judgment of a court of record of this state;

(2) an affidavit or other instrument which, for five or more years, has been filed or recorded in the office of a district or county clerk located in the county in which the suit is pending or in which the land involved, in whole or part, is situated;

(3) a final judgment of a court of record of another state which is subject to recordation in this state and (A) has been on file for 15 or more years in the official records of the court rendering it, or (B) has been filed or recorded for 15 or more years in the office of a department or agency of this state or of a district or county clerk of this state located in a county other than that in which the suit is pending or in which the land involved, in whole or part, is situated;

(4) an affidavit or other instrument which, for 15 or more years, has been filed or recorded in the office of a department or agency of this state or of a district or county clerk of this state located in a county other than that in which the suit is pending or in which the land involved, in whole or part, is situated.

(b) A document described in Subsections (a)(3) or (a)(4) of this section is not admissible unless, for 30 or more days before trial, it has been on file among the papers of the suit in which it is offered.

Sec. 2. (a) A statement concerning family history, genealogy, marital status, or heirship of a decedent, when contained in a document described in Subsection (a), Section 1 of this Article which is admitted in evidence, is prima facie true. Nevertheless, the statement may be rebutted, and the true facts shown, by any person other than a person who is estopped to deny the statement under a statute or the common law of this state.

(b) A properly certified and authenticated copy of a document described in Subsection (a), Section 1 of this Article is equally admissible with the original.

[Acts 1957, 55th Leg., p. 266, ch. 125, § 1; Acts 1965, 59th Leg., p. 994, ch. 480, § 1.]

**Art. 3726b. Defects Not Affecting Admissibility in Evidence of Certain Instruments**

Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the County Court, and which has been, or hereafter may be, so record-

ed, after being proved or acknowledged in the manner provided by the laws of this state in force at the time of its registration, or at the time it was proved or acknowledged, or every instrument which has been, or hereafter may be, actually recorded for a period of 10 years in the book used by said clerk for the recording of such instruments, whether executed, proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that 10 years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party, or his attorney of record; and unless such opposite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. Whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of 10 years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence that it has not been signed by the proper officer of any corporation; or that the corporate seal of the corporation has not been impressed on such instrument; or that the record does not show such corporate seal; or that the record does not show authority therefor by the Board of Directors and stockholders (or either of them) of a corporation; or that such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or that the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent, or trustee or other agency mentioned in such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or that such instrument is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or that the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or that the notarial seal is not shown of record; or that the wording of the consideration may or might create an implied lien in favor of grantor, (By this is not meant an express vendor's lien retained); and said instrument shall be given the same effect as if it were not so defective; provided that this Act shall be cumulative of all other laws on this

subject; and provided that if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect.

[Acts 1929, 41st Leg., p. 390, ch. 179, § 1.]

#### Art. 3727. Old Record Books Declared Valid

All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be in all respects lawful and valid records of such counties respectively, for all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties.

[Acts 1925, S.B. 84.]

#### Art. 3728. Copies of Transcribed Records

Where a county has been or may be created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records.

[Acts 1925, S.B. 84.]

#### Art. 3729. Certain Abstracts

All abstracts of land titles, or land abstract books to lands in this State, compiled from the records of any county in this State, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the months of May, 1874, March, 1876, and January, 1889, shall be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this State; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to

which they relate. Any testimony is admissible which tends to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tends to show the compiler thereof to have been incompetent or unreliable, or competent and reliable. A copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before the trial, and the same defense may be made as if copies of the original record had been filed; provided, that the party offering such abstracts of land titles, or land title abstract books, in evidence, shall himself, or by his agent or attorney, have made affidavit that the original instrument to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this State; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles, or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns, to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good cause, to produce said abstracts of land titles or land title abstract books, as herein provided. Said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause



to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain. The provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded. Whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof.

[Acts 1925, S.B. 84.]

#### Art. 3730. Certified Copy of Instrument Sued On

If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this State, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but if the defendant shall plead, and file an affidavit that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being summoned as a witness, attend with the same on trial of the cause.

[Acts 1925, S.B. 84.]

#### Art. 3731. Certified Copies from Heads of Departments

Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any department of this State, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this State, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence.

[Acts 1925, S.B. 84.]

#### Art. 3731a. Official Written Instruments, Certificates, Records, Returns and Reports; Foreign Laws

##### Domestic Records

Sec. 1. Any written instrument, certificate, record, part of record, return, report, or part of report, made by an officer of this State or of any governmental subdivision thereof, or by his deputy, or person or employee under his supervision, in the performance of the functions of his office and employment, shall be, so far as relevant, admitted in the courts of this State as evidence of the matter stated therein, subject to the provisions in Section 3.

##### Federal, Out of State, and Foreign Records

Sec. 2. Any written instrument which is permitted or required by law to be made, filed, kept or recorded (including but not limited to certificate, written statement, contract, deed,

conveyance, lease, concession, covenant, grant, record, return, report or recorded event) by an officer or clerk of the United States or of another state or nation or of any governmental subdivision of any of the foregoing, or by his deputy or employee; or by any Notary Public of a foreign country in a protocol or similar book in the performance of the functions of his office, shall, so far as relevant, be admitted in the courts of this State as evidence of the matter stated therein, subject to the provisions in Section 3.

##### Foreign Laws

Sec. 2a. Any constitutional, statutory, written law, proclamation, decree, statutory or administrative rule or regulation, or rule of law of any foreign country as of a particular date or dates, shall, so far as relevant, be admitted in the courts of this State as evidence of the matters contained therein, subject to the provisions of Section 3. It is hereby declared that the word "writing" in Section 3 shall be interpreted to include the items contained in this Section.

##### Notice to Adverse Party

Sec. 3. Such writing shall be admissible only if the party offering it has delivered a copy thereof, or so much of it as may relate to the controversy, to the adverse party a reasonable time before trial, unless in the opinion of the trial court the adverse party has not been unfairly surprised by the failure to deliver such copy.

##### Authentication of Copy

Sec. 4. Such writings may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy. Except in the case of a copy of an official writing from a public office of this State or a subdivision thereof, the attestation shall be accompanied with a certificate that the attesting officer has the legal custody of such writing. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States, or by any officer of a United States military government, stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. In the case of the matters in Section 2a, the substance, contents, and/or wording of any of such matters may also be evidenced by certification, as to existence on a particular date or dates by the governmental head of such country or his secretary, or such country's attorney (such as attorney general) or assistant attor-

ney or chief legal head, or the president, leader or head of its or one of its law-making bodies or the secretary thereof; or judge or any justice of any appellate court of such country and if none, judge or any justice of one or any one of its highest judicial tribunals. All such attested and certified instruments and the contents of the certificate and the title of the person making same, shall be evidence of the matters, statements, representations and title contained therein.

**Proof of Lack of Record**

Sec. 5. A written statement signed by an officer having the custody of an official record, or by his deputy, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

**Other Proof**

Sec. 6. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

[Acts 1951, 52nd Leg., p. 830, ch. 471; Acts 1953, 53rd Leg., p. 756, ch. 304, eff. June 5, 1953; Acts 1961, 57th Leg., p. 685, ch. 321, § 1.]

**Art. 3731b. Photographic or Photostatic Copies of Business and Official Records; Admissibility**

Sec. 1. Where any public officer of this state, the United States or another state or nation or of any political subdivision of any of the foregoing or his deputy or employee in the performance of the function of his office has kept or recorded any memorandum, document, entry or report and has caused the same to be copied or reproduced by any photographic, photostatic, microfilm or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction shall be admissible in evidence under the provisions of Section 3 of this Article.

Sec. 2. Where any business, as that term is defined in Chapter 321 of the General Laws of Texas 1951,<sup>1</sup> in the regular course of business has kept any memorandum of or made any record of an act, event or condition, and has caused the same to be copied or reproduced by any photographic, photostatic, microfilm or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction shall be admissible in evidence under the provisions of Section 3 of this Article.

Sec. 3. Such photograph, photostat, microfilm or other reproduction shall be, so far as relevant, admitted in any judicial or administrative proceeding in this state as evidence of the matters stated therein, in any instance in which the original memorandum, record, document, entry or report would be admitted under the provisions of Chapter 321 or Chapter 471 of the General Laws of Texas 1951.<sup>2</sup> In the

case of public records the reproduction may be proved to be correct by following the procedure set forth in Chapter 471 of the General Laws of Texas 1951, as amended. In the case of business records the reproduction may be proved to be correct by the testimony of the entrant, custodian or other qualified witness.

Sec. 4. The existence or non-existence of the original shall not affect the admissibility of the reproduction. An enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under the direction of the court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original.

[Acts 1957, 55th Leg., p. 1257, ch. 418.]

<sup>1</sup> Article 3737e.

<sup>2</sup> Article 3737a.

**Art. 3731c. Photographic or Photostatic Copies of Written Instruments; Use in Judicial or Administrative Proceedings**

Any copy or reproduction of a writing or written instrument, by photographic, photostatic, microfilm or other processes which accurately reproduces or forms a durable medium for reproducing the originals of any such writing or written instrument, can be used and its use shall be permitted in any judicial or administrative proceeding or trial, including the taking of depositions, where the party using the same, at the time of its offer in evidence either produces the original or reasonably accounts for its absence, or where there is no bona fide dispute as to its being an accurate reproduction of the original. This Act shall be cumulative of any other statutory or common law relating to the subject hereof.

[Acts 1959, 56th Leg., p. 867, ch. 393, § 1.]

**Art. 3732. Assessment or Payment of Taxes**

Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same.

[Acts 1925, S.B. 84.]

**Art. 3733. Rate of Interest Presumed**

The rate of interest in any other State, territory or country is presumed to be the same as that established by law in this State, and may be recovered accordingly without allegation or proof thereof, unless the rate of interest in such other country be alleged and proved.

[Acts 1925, S.B. 84.]

**Art. 3734. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3734a. Proof of Execution of Written Instrument Offered in Evidence**

In the trial of any civil or criminal case, where an attested or witnessed instrument or

writing is offered in evidence and said instrument is not required by law to be attested or witnessed, the execution of same may be proved in the same manner as if it were not attested or witnessed.

[Acts 1933, 43rd Leg., p. 279, ch. 109.]

**Art. 3735. Appointment and Qualification of Executor, etc.**

Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian.

[Acts 1925, S.B. 84.]

**Art. 3736. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3737. Records of Corporation**

The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceedings to which such corporation may be a party.

[Acts 1925, S.B. 84.]

**Art. 3737a. Records of Closed Bank as Evidence**

Sec. 1. Whenever an insolvent state bank shall come into the hands of the Banking Commissioner of Texas for liquidation, all books, records, documents and papers of such failed bank received by the Commissioner and held by him in the course of the liquidation, or certified copies thereof, under the hand and official seal of the Commissioner, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Commissioner that same were received from the custody of the failed bank, or found among its effects.

Sec. 2. That such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima facie evidence of the facts disclosed thereby.

[Acts 1927, 40th Leg., p. 290, ch. 203.]

**Art. 3737b. Evidence of Handwriting by Comparison**

In the trial of any civil case, it shall be competent to give evidence of handwriting by comparison, made by experts or by the jury. The standard of comparison offered in evidence must be proved to the satisfaction of the judge to be genuine before allowing same to be compared with the handwriting in dispute.

[Acts 1933, 43rd Leg., p. 234, ch. 106.]

**Art. 3737c. Certified Copies of Records or Instruments Pertaining to Oil Industry**

Certified copies of well logs, and records, plugging records, oil and gas production records or reports and all other instruments pertaining to the drilling, completion, operation, abandonment, or plugging of oil and/or gas wells, in this State, required by Statute or by rules heretofore or hereafter adopted by the Railroad Commission of Texas, to be filed with the Railroad Commission of Texas, and which have been heretofore or may be hereafter filed with said Railroad Commission of Texas, shall be admissible in evidence. Such certificate to any such certified copies may be made by any member of the Railroad Commission of Texas, or by the Secretary of said Commission.

[Acts 1937, 45th Leg., p. 1118, ch. 449, § 1.]

**Art. 3737d. Repealed. Acts 1955, 54th Leg., p. 860, ch. 323, § 3. Eff. May 24, 1955**

**Art. 3737d-1. Court Interpreters in Certain Judicial Districts in Counties Bordering International Boundary**

Sec. 1. In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one (1) county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a Judicial District composed of four (4) counties, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, and which county has three (3) or more District Courts or Judicial Districts wholly within said county, or in any county bordering on the Gulf of Mexico, and which said county has four (4) or more District Courts or Judicial Districts of which two (2) or more are wholly within said county, the Commissioners Court of said county, upon request of the District Judge, or District Judges, after determination by said Judges of the need therefor, shall appoint such court interpreters on a full or part-time basis as may be necessary to properly carry out the function of said courts; that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language; and shall each receive a salary as fixed by the Commissioners Court of said county, but not to exceed Four Thousand, Eight Hundred Dollars (\$4,800) per year, payable in equal monthly payments, out of the General Fund of such county.

Sec. 2. The Commissioners Court shall appoint such interpreter or interpreters as shall be designated by the District Judges requesting such appointment.

[Acts 1955, 54th Leg., p. 860, ch. 323; Acts 1959, 56th Leg., p. 133, ch. 79, § 1.]

**Art. 3737e. Memorandum or Record of Act, Event or Condition; Absence of Memorandum or Record as Evidence**

**Competence of Record as Evidence**

Sec. 1. A memorandum or record of an act, event or condition shall, insofar as relevant, be competent evidence of the occurrence of the act or event or the existence of the condition if the judge finds that:

(a) It was made in the regular course of business;

(b) It was the regular course of that business for an employee or representative of such business with personal knowledge of such act, event or condition to make such memorandum or record or to transmit information thereof to be included in such memorandum or record;

(c) It was made at or near the time of the act, event or condition or reasonably soon thereafter.

**Proof of Identity and Mode of Preparation; Lack of Personal Knowledge**

Sec. 2. The identity and mode of preparation of the memorandum or record in accordance with the provisions of paragraph one (1) may be proved by the testimony of the entrant, custodian or other qualified witness even though he may not have personal knowledge as to the various items or contents of such memorandum or record. Such lack of personal knowledge may be shown to affect the weight and credibility of the memorandum or record but shall not affect its admissibility.

**Absence of Record**

Sec. 3. Evidence to the effect that the records of a business do not contain any memorandum or record of an alleged act, event or condition shall be competent to prove the non-occurrence of the act or event or the non-existence of the condition in that business if the judge finds that it was the regular course of that business to make such memoranda or records of all such acts, events or conditions at the time or within reasonable time thereafter and to preserve them.

**Business Defined**

Sec. 4. "Business" as used in this Act includes any and every kind of regular organized activity whether conducted for profit or not.

**Records or Photo Copies; Admissibility; Affidavit; Filing**

Sec. 5. Any record or set of records or photographically reproduced copies of such records, which would be admissible pursuant to the provisions of Sections 1 through 4 shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Sections 1 through 4 above, that such records attached to such affidavit were in fact so kept as required by Sections 1 through 4 above, provided further, that such record or records along with such affidavit are filed with the

clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen (14) days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties or persons who desire copies and not by the party or parties who files the records and serves notice of said filing, in compliance with this Act. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule 21a, Texas Rules of Civil Procedure, fourteen (14) days prior to commencement of trial in said cause.

**Hospital X-Ray Pictures; Admissibility; Affidavit; Filing**

Sec. 6. X-rays which are made in any hospital in the United States of America, which are made as a regular part of the business of that hospital, which are made in accordance with good radiology techniques, by a person competent to make X-rays, which are made under the supervision of the Department of Radiology of such hospital, which have photographed thereon the name and, if applicable, the hospital number assigned the person X-rayed, along with the date of such X-ray and, if the person's name is not known, then the words "Name Unknown" and the number assigned said person, shall be admitted into evidence in the trial of any cause in this state if they are accompanied by the affidavit of the head of the Radiology Department of said hospital or one of his partners, which affidavit shall affirmatively state that the conditions of this section have been met, and if the Radiology Department has been changed, then such affidavit may be made by the person who was the head of the Radiology Department of said hospital or one of his partners at the time said X-rays were made, provided such X-rays are accompanied by such affidavit and shall be filed with the clerk of the court for inclusion with the papers in the cause in which the X-rays are sought to be used as evidence at least fourteen (14) days prior to the day upon which trial of said cause commences, and provided the other parties to said cause are given prompt notice by the party filing same of the filing of such X-rays and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and which notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule 21a, Texas Rules of Civil Procedure, fourteen (14) days prior to commencement of trial in said cause; the clerk of the court shall permit any party to said cause to remove the X-rays from his possession for the purposes of examination, provided a receipt

is presented therefor and said X-rays shall be returned to the clerk of said court at least seven (7) days prior to the day upon which trial of said cause commences.

Medical Records; Form of Affidavit

Sec. 7. A form for the affidavit of such person as shall make such affidavit as is permitted in Section 5 above shall be sufficient if it follows this form, though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this Act shall suffice, to-wit:

No. \_\_\_\_\_
John Doe (Name of Plaintiff)
v.
John Roe (Name of Defendant)
IN THE \_\_\_\_\_ COURT IN AND FOR \_\_\_\_\_ COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_, I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the medical records librarian of \_\_\_\_\_ Hospital and as such I am the custodian of the records of the said \_\_\_\_\_ Hospital. Attached hereto are \_\_\_\_\_ pages of records from the \_\_\_\_\_ Hospital. These said \_\_\_\_\_ pages of records are kept by the \_\_\_\_\_ Hospital in the regular course of business, and it was the regular course of business in the \_\_\_\_\_ Hospital for an employee or representative, or a doctor permitted to practice in the \_\_\_\_\_ department or division, of the \_\_\_\_\_ Hospital, with personal knowledge of the act, event or condition recorded to make the memorandum or record or to transmit information thereof to be included in such memorandum or record; and the memorandum or record was made at or near the time of the act, event or condition recorded or reasonably soon thereafter. The records attached hereto are exact duplicates of the original, and it is a rule of the \_\_\_\_\_ Hospital to not permit the originals to leave the hospital.

Affiant

SWORN TO AND SUBSCRIBED before me on the day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for \_\_\_\_\_ County, Texas.

X-Rays; Form of Affidavit

Sec. 8. A form for the affidavit of such person as shall make such affidavit as is permitted in Section 6 above shall be sufficient

if it follows this form, though this form shall not be exclusive, and an affidavit which substantially complies with the provisions of this Act, shall suffice, to-wit:

No. \_\_\_\_\_
John Doe (Name of Plaintiff)
v.
John Roe (Name of Defendant)
IN THE \_\_\_\_\_ COURT IN AND FOR \_\_\_\_\_ COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_, I am over 21 years of age, competent to make this affidavit, and personally acquainted with the facts herein stated:

I am the \_\_\_\_\_ of the Radiology Department of the \_\_\_\_\_ Hospital. Attached hereto are \_\_\_\_\_ pages of X-rays. These X-rays were made by the \_\_\_\_\_ Hospital in accordance with good radiology techniques, they were made as a regular part of the business of the \_\_\_\_\_ Hospital, they were made by a competent person, a technician or radiologist, under my supervision and control. Photographed on each X-ray is the name, number and date for each X-ray.

Affiant

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for \_\_\_\_\_ County, Texas.

[Acts 1951, 52nd Leg., p. 345, ch. 321; Acts 1969, 61st Leg., p. 1076, ch. 353, § 1, eff. May 27, 1969; Acts 1973, 63rd Leg., pp. 276, 277, ch. 128, §§ 1, 2, eff. Aug. 27, 1973.]

Art. 3737f. Personal Injury Action; Exclusion of Evidence of Settlement of Property Damage and Medical Expense Claims

In a lawsuit being tried before a jury for damages for personal injuries which resulted from an occurrence which is also the basis for a claim for property damage and/or payment of medical expense, no evidence is admissible which informs the jury that the property damage claim or medical expense has been paid or settled.

[Acts 1969, 61st Leg., p. 1639, ch. 511, § 1, eff. June 10, 1969.]

2. DEPOSITIONS

Arts. 3738, 3739. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 3740. Notice by Publication

In all civil suits where it shall be shown to the court, by affidavit filed therein, that either

party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for two (2) consecutive weeks, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the fourteenth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 327, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Vernon's Texas Rules of Civil Procedure, Rule 190.

**Arts. 3741 to 3745. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3746. Officers Authorized to Execute**

The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the State, to any clerk of the District Court, any judge or clerk of the County Court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the State, and within the United States, to any clerk of a Court of Record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this State within some other State or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public or any minister, commissioner or charge d'affaires of the United States resident in, and accredited to, the country

where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country.

4. If the witness is alleged to be a member of the Armed Forces of the United States or of the Auxiliaries thereof or a civilian employed by or accompanying any such Forces or Auxiliaries, without the territorial confines of the forty-eight states and the District of Columbia of the United States of America, such commission may be addressed to any commissioned officer in the Armed Forces of the United States of America, in the Auxiliaries thereto, or to any commissioned officer in the Armed Force Reserve of the United States of America or any Auxiliary thereto. When any deposition appears on its face to have been taken in compliance with the provisions of this Section and when such deposition, or any part thereof, is offered in evidence, it shall be presumed, in the absence of pleading and proof to the contrary, that the person taking such deposition as a commissioned officer was such on the date on which the deposition was taken and that the witness whose deposition was taken was one of those with respect to whom such action is hereby authorized.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 221, ch. 164, § 1.]

**Art. 3747. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3748. May Be Attached**

If the witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases.

[Acts 1925, S.B. 84.]

**Arts. 3749 to 3756. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3757. Power of Officer Taking Depositions**

Said officer shall have the same power and authority to enforce the attendance of the witness, and to compel him to testify, as in cases of written interrogatories.

[Acts 1925, S.B. 84.]

**Arts. 3758 to 3769. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3769a. Execution of Commission Issued by Court of Foreign State**

Whenever any mandate, writ or commission is issued out of any court of record in any oth-

er state, territory, district or foreign jurisdiction, and it is required to take the testimony of a witness or witnesses in this state, either on written interrogatories or by oral deposition, the witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this State.

[Acts 1929, 41st Leg., p. 553, ch. 268, § 1.]

**Art. 3769b. Contempt in Disobeying Writ**

Whenever any commission for the taking of the deposition of any witness or party to any civil suit pending in any of the courts of Texas

shall have been regularly and legally issued and placed in the hands of a person legally designated and qualified to take depositions under the laws of this state such officer shall have authority to issue any writ authorized by law to compel the attendance of a witness in court, and upon disobedience of such writ by any such witness he may be punished as for contempt either by the court out of which such commission issued, or by the Judge of any District Court of the County in which such witness resides.

[Acts 1929, 41st Leg., p. 553, ch. 268, § 1-a.]

**Art. 3769c. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

# TITLE 56

## EXECUTION

### Article

- 3770 to 3772. Repealed.
- 3773. Dormant Judgment.
- 3774. Repealed.
- 3775. On Death of Plaintiff.
- 3776 to 3784. Repealed.
- 3785. Indorsements by Officer.
- 3786. Execution on Property of Surety.
- 3787. On Death, etc., of Officers.
- 3788 to 3791. Repealed.
- 3792. Property Exempt.
- 3793 to 3797. Repealed.
- 3798. Shares of Stock Sold.
- 3799. Duty of Officer.
- 3800. Expense of Keeping Property.
- 3801 to 3804. Repealed.
- 3805. Sales Made Elsewhere.
- 3806. Sale of City Lots.
- 3807. Sale of Rural Property.
- 3808, 3809. Repealed.
- 3810. Sales Under Deed of Trust.
- 3811 to 3815. Repealed.
- 3816. Conveyance to Purchaser.
- 3817. Conveyance After Death of Purchaser.
- 3818. Purchaser Deemed Innocent.
- 3819. Penalty for Unlawful Sale.
- 3820. Officer Shall Not Purchase.
- 3821 to 3823. Repealed.
- 3824. Money to be Paid Over.
- 3825. Failure to Levy or Sell.
- 3826. Failure to Return Execution.
- 3827. Surplus to be Paid to Defendant.
- 3828. Repealed.
- 3829. Death of Defendant.
- 3830. Death of the Plaintiff.
- 3831. Repealed.

**Arts. 3770 to 3772. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

#### **Art. 3773. Dormant Judgment**

If no execution is issued within ten years after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall issue thereon unless such judgment be revived. If the first execution has issued within the ten years, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 369, ch. 144.]

**Art. 3774. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

#### **Art. 3775. On Death of Plaintiff**

Where a sole plaintiff, or one of several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the de-

ceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made; provided that if there be no administration upon the estate of such deceased sole plaintiff or plaintiffs, and none necessary as shown by an affidavit filed with the clerk of the court in which judgment was obtained, execution shall issue in the name of all the plaintiffs, both living and deceased, as shown in the judgment, and all money or moneys collected thereunder by the officer levying such execution, and paid unto the registry of the court, out of which such execution issued shall be partitioned among and paid to parties entitled to the same, and in the proportions to which they are entitled to the same under proper order of the presiding judge of said court.

[Acts 1925, S.B. 84.]

**Arts. 3776 to 3784. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

#### **Art. 3785. Indorsements by Officer**

The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do so, or in case of false indorsement, he and his sureties shall be liable on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement.

[Acts 1925, S.B. 84.]

*Repealed in part, Rules of Civil Procedure, Rule 636.*

#### **Art. 3786. Execution on Property of Surety**

If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. If property of the principal cannot be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, and upon so much of the property of the surety as may be necessary to make the amount of the execution.

[Acts 1925, S.B. 84.]



**Art. 3787. On Death, etc., of Officers**

If the officer receiving an execution die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, shall proceed therein in the same manner that such officer should have done.

[Acts 1925, S.B. 84.]

**Arts. 3788 to 3791. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3792. Property Exempt**

Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

[Acts 1925, S.B. 84.]

**Arts. 3793 to 3797. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3798. Shares of Stock Sold**

Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock.

[Acts 1925, S.B. 84.]

**Art. 3799. Duty of Officer**

The officer shall keep securely all personal property levied on by him for which no delivery bond has been given. If any injury or loss should result by his negligence to any party interested, he and his sureties shall be liable to pay the value of the property so lost or the amount of the injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days notice being given in the court from which the execution issued.

[Acts 1925, S.B. 84.]

**Art. 3800. Expense of Keeping Property**

The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property.

[Acts 1925, S.B. 84.]

**Arts. 3801 to 3804. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3805. Sales Made Elsewhere**

Where by law the public sales of lands in any county are directed to be made at any other place than the courthouse door, the sales herein provided to be made at the courthouse door shall be made at the place designated by such law.

[Acts 1925, S.B. 84.]

**Art. 3806. Sale of City Lots**

If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

[Acts 1925, S.B. 84.]

**Art. 3807. Sale of Rural Property**

When lands not situated in any town or city or taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field notes of each lot as numbered, with the certificate of the county surveyor that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease. All of the expenses attending the survey and sale of said land in lots shall be paid by the defendant, and shall in no case constitute any additional cost in the case.

[Acts 1925, S.B. 84.]

**Arts. 3808, 3809. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3810. Sales Under Deed of Trust**

All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be made at the courthouse door of the county in which such sale is to be made, and if such real estate be in more than one county, one at the courthouse door of each county in which said real estate may be situated, or the owner of such real estate may, upon written application, cause the same to be sold as provided in said deed of trust or contract lien. Such sale shall be made at public vendue between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the first Tuesday in any month. When any such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes.

[Acts 1925, S.B. 84.]

**Arts. 3811 to 3815. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3816. Conveyance to Purchaser**

When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold.

[Acts 1925, S.B. 84.]

**Art. 3817. Conveyance After Death of Purchaser**

If the purchaser, having complied with the terms of the sale, shall die before a conveyance was executed to him, the officer shall nevertheless convey the property to the purchaser, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

[Acts 1925, S.B. 84.]

**Art. 3818. Purchaser Deemed Innocent**

A purchaser at a sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

[Acts 1925, S.B. 84.]

**Art. 3819. Penalty for Unlawful Sale**

Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner prescribed herein, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered on motion, five days notice thereof being given such officer and his sureties.

[Acts 1925, S.B. 84.]

**Art. 3820. Officer Shall Not Purchase**

If any officer or his deputy making sale of property on execution, shall, directly or indirectly, purchase the same, the sale shall be void.

[Acts 1925, S.B. 84.]

**Arts. 3821 to 3823. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3824. Money to be Paid Over**

When an officer has collected money on execution, he shall pay the same to the party entitled thereto at the earliest opportunity. If an officer fails or refuses to pay money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so col-

lected, with damages at the rate of five per cent per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

[Acts 1925, S.B. 84.]

**Art. 3825. Failure to Levy or Sell**

Should an officer fail or refuse to levy upon or sell any property subject to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

[Acts 1925, S.B. 84.]

**Art. 3826. Failure to Return Execution**

Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs to be recovered as provided is the preceding article.

[Acts 1925, S.B. 84.]

**Art. 3827. Surplus to be Paid to Defendant**

If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

[Acts 1925, S.B. 84.]

**Art. 3828. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3829. Death of Defendant**

The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

[Acts 1925, S.B. 84.]

**Art. 3830. Death of the Plaintiff**

An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but shall be executed and returned in the same manner as if the plaintiff was still living.

[Acts 1925, S.B. 84.]

**Art. 3831. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

# TITLE 57

## EXEMPTIONS

### 1. PROPERTY EXEMPT FROM FORCED SALE

#### Article

- 3832, 3832a. Repealed.
- 3833. "Homestead."
- 3834. Proceeds Exempt.
- 3835. Interests in Land Exempt from Satisfaction of Liabilities.
- 3836. Personal Property Exempt from Satisfaction of Liabilities.
- 3837. Public Property.
- 3838. Public Libraries.
- 3839. Exemption Does Not Apply.
- 3840. Claim for Rent, etc.

### 2. EXCESS OVER HOMESTEAD SET APART

- 3841. Voluntary Designation.
- 3842. Mode of Setting it Apart.
- 3843. Recorded, etc.
- 3844. Subject to Execution.
- 3845. Notice to Set Apart.
- 3846. Service and Return.
- 3847. Defendant May Designate.
- 3848. Designation Recorded.
- 3849. Effect Of.
- 3850. May Appoint Commissioners.
- 3851. Commissioners to Designate.
- 3852. Requisites of Designation.
- 3853. Returned and Recorded.
- 3854. Sheriff's Return.
- 3855. Fees and Expenses.
- 3856. Excess to be Sold.
- 3857. Defendant May Change, etc.
- 3858. Law Cumulative.
- 3859. Personal Property Designated.

### 1. PROPERTY EXEMPT FROM FORCED SALE

Arts. 3832, 3832a. Repealed by Acts 1973, 63rd Leg., p. 1629, ch. 588, § 4, eff. Jan. 1, 1974

See, now, article 3836.

#### Art. 3833. Homestead

(a) If it is used for the purposes of a home, or as a place to exercise the calling or business to provide for a family or a single, adult person, not a constituent of a family, the homestead of a family or a single, adult person, not a constituent of a family, shall consist of:

(1) for a family, not more than two hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

(2) for a single, adult person, not a constituent of a family, not more than one hundred acres, which may be in one or more parcels, with the improvements thereon, if not in a city, town, or village; or

(3) for a family or a single, adult person, not a constituent of a family, a lot or lots, not to exceed in value ten thousand dollars at the time of their designation as

a homestead, without reference to the value of any improvements thereon, if in a city, town, or village.

(b) Temporary renting of the homestead shall not change its homestead character when no other homestead has been acquired.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 2518, ch. 841, § 1, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 1627, ch. 588, § 1, eff. Jan. 1, 1974.]

Amendment of this article by Acts 1969, 61st Leg., p. 2518, ch. 841, § 1, to take effect as a law, was conditioned by section 2 upon approval by the electors of amendment to Const. art. 16, § 51, proposed by S.J.R. No. 32 of Acts 1969, 61st Leg., p. 3229. The proposed constitutional amendment was voted on and approved at election held Nov. 3, 1970.

The 1973 Act, which by §§ 1 to 4 amended this article, arts. 3835, 3836 and repealed arts. 3832, 3832a, provided in § 5: "This Act takes effect on January 1, 1974, and governs all proceedings, orders, judgments, and decrees in suits and actions brought after it takes effect, and also all further proceedings in actions then pending. All things properly done under any previously existing rule or statute prior to the taking effect of this Act shall be treated as valid."

#### Art. 3834. Proceeds Exempt

The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale.

[Acts 1925, S.B. 84.]

#### Art. 3835. Interests in Land Exempt from Satisfaction of Liabilities

The homestead of a family or a single, adult person, not a constituent of a family, and a lot or lots held for the purposes of sepulchre of a family or a single, adult person, not a constituent of a family, are exempt from attachment, execution and every type of forced sale for the payment of debts, except for encumbrances properly fixed thereon.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1628, ch. 588, § 2, eff. Jan. 1, 1974.]

#### Art. 3836. Personal Property Exempt from Satisfaction of Liabilities

(a) Personal property (not to exceed an aggregate fair market value of \$15,000 for each single, adult person, not a constituent of a family, or \$30,000 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) furnishings of a home, including family heirlooms, and provisions for consumption;

(2) all of the following which are reasonably necessary for the family or single, adult person, not a constituent of a family: implements of farming or ranching; tools, equipment, apparatus (including a boat), and books used in any trade or profession; wearing apparel; two firearms and athletic and sporting equipment;

(3) any two of the following categories of means of travel: two animals from the following kinds with a saddle and bridle for each: horses, colts, mules, and donkeys; a bicycle or motorcycle; a wagon, cart, or dray, with harness reasonably necessary for its use; an automobile or station wagon; a truck cab; a truck trailer; a camper-truck; a truck; a pickup truck;

(4) livestock and fowl not to exceed the following in number and forage on hand reasonably necessary for their consumption: 5 cows and their calves, one breeding-age bull, 20 hogs, 20 sheep, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas;

(5) a dog, cat, and other household pets;

(6) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member or members of the family of the insured person or a dependent or dependents of a single, adult person, not a constituent of a family, is beneficiary thereof;

(7) current wages for personal services.

(b) The use of any property not exempt from attachment, execution and every type of forced sale for the payment of debts to acquire property described in Subsection (a) of this article, or any interest therein, to make improvements thereon, or to pay indebtedness thereon with the intent to defraud, delay or hinder a creditor or other interested person from obtaining that to which he is or may become entitled shall not cause the property or interest so acquired, or improvements made to be exempt from seizure for the satisfaction of liabilities under Subsection (a) of this article.

(c) If any property or any interest therein or improvement is acquired by discharge of an encumbrance held by another, a person defrauded, delayed, or hindered by that acquisition as provided in Subsection (b) of this article is subrogated to the rights of the prior encumbrancer.

(d) A creditor must assert his claim under Subsections (b) and (c) of this article within four years of the transaction of which he complains. A person with an unliquidated or contingent demand must assert his claim under Subsections (b) and (c) of this article within one year after his demand is reduced to judgment.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1623, ch. 588, § 3, eff. Jan. 1, 1974.]

#### Art. 3837. Public Property

The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale.

[Acts 1925, S.B. 84.]

#### Art. 3838. Public Libraries

All public libraries shall be exempt from attachment, execution and every other specie of forced sale.

[Acts 1925, S.B. 84.]

#### Art. 3839. Exemption Does Not Apply

The exemption of the homestead provided for in this title shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.

2. For taxes due thereon.

3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead.

[Acts 1925, S.B. 84.]

#### Art. 3840. Claim for Rent, etc.

The exemption of personal property above provided for shall not apply when the debt is due for rents or advances made by a landlord to his tenant, or to other debts which are secured by a lien on such property.

[Acts 1925, S.B. 84.]

### 2. EXCESS OVER HOMESTEAD SET APART

#### Art. 3841. Voluntary Designation

When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this State.

[Acts 1925, S.B. 84.]

#### Art. 3842. Mode of Setting it Apart

The party desiring so to designate and set apart the homestead shall file for record with the county clerk of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes and bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and if more than one survey, the number of acres in each.

[Acts 1925, S.B. 84.]

#### Art. 3843. Recorded, etc.

Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded in the record of deeds of said county.

[Acts 1925, S.B. 84.]

**Art. 3844. Subject to Execution**

Where the owner of a homestead, a part of a larger tract, has failed to so designate and set apart his homestead, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed.

[Acts 1925, S.B. 84.]

**Art. 3845. Notice to Set Apart**

The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. Such notice shall be written or printed, and shall be signed by the sheriff or constable.

[Acts 1925, S.B. 84.]

**Art. 3846. Service and Return**

Such notice may be served on the defendant by such officer by reading it to him, or by leaving a copy of it at his place of residence with some person over fourteen years of age. The officer shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. Such notice and return shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated.

[Acts 1925, S.B. 84.]

**Art. 3847. Defendant May Designate**

On the service of such notice, the defendant in execution shall have the right within ten days thereafter, to designate and set apart his homestead, and deliver such designation to the sheriff or constable.

[Acts 1925, S.B. 84.]

**Art. 3848. Designation Recorded**

The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the county clerk of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county.

[Acts 1925, S.B. 84.]

**Art. 3849. Effect Of**

Such designation and setting apart of the homestead made by the defendant under any preceding article shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a cer-

tified copy of the record thereof, shall be admitted in evidence of the facts stated therein.

[Acts 1925, S.B. 84.]

**Art. 3850. May Appoint Commissioners**

If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the officer holding such execution shall forthwith summon either verbally or in writing three disinterested freeholders of the county as commissioners to designate a homestead for the defendant.

[Acts 1925, S.B. 84.]

**Art. 3851. Commissioners to Designate**

The commissioners shall forthwith proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them and shall be duly sworn to, which shall be sufficient to admit the same of record.

[Acts 1925, S.B. 84.]

**Art. 3852. Requisites of Designation**

The designation of the homestead by such commissioners shall contain each requisite prescribed for a designation and setting apart by the defendant, and, shall also state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief.

[Acts 1925, S.B. 84.]

**Art. 3853. Returned and Recorded**

The commissioners shall return such designation to the sheriff or constable, who shall deliver the same to the county clerk to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this title.

[Acts 1925, S.B. 84.]

**Art. 3854. Sheriff's Return**

Whenever a homestead is designated under the provisions of this title, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation

of his homestead within the time prescribed by law, the return shall show that fact, and also that the commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the county clerk, stating the times when said acts were done. Such return shall be prima facie evidence of the facts therein stated.

[Acts 1925, S.B. 84.]

**Art. 3855. Fees and Expenses**

The commissioners shall be entitled to receive two dollars a day for their services, and the surveyor five dollars per day, to include pay for chain carriers. The sheriff or constable and clerk shall be entitled to such fees as are allowed by law. Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs.

[Acts 1925, S.B. 84.]

**Art. 3856. Excess to be Sold**

Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this title, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution.

[Acts 1925, S.B. 84.]

**Art. 3857. Defendant May Change, etc.**

The defendant may, at any time after his homestead has been designated and set apart

in either of the modes pointed out in this title, change the boundaries of his said homestead by an instrument executed and recorded as in cases of setting apart the homestead, but such change shall not impair the rights of parties acquired prior to such change.

[Acts 1925, S.B. 84.]

**Art. 3858. Law Cumulative**

The provisions of this title in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for producing partition, by the purchaser at such execution sale, between himself and the owner of the homestead.

[Acts 1925, S.B. 84.]

**Art. 3859. Personal Property Designated**

Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on. If he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

[Acts 1925, S.B. 84.]

## TITLE 58

### EXPRESS COMPANIES

#### Article

- 3860. Declared Common Carriers.
- 3861. Regulation.
- 3862. Penalty for Overcharge.
- 3863. Powers of Commission.
- 3864. General Office.
- 3865. To Give Notice, etc.
- 3866. Penalty.

#### Art. 3860. Declared Common Carriers

Each person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this State, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged. No such company shall be compelled to carry any gunpowder, dynamite, kerosene, naphtha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the Railroad Commission. No person, firm or corporation so engaged shall demand or receive for such services other than reasonable compensation.

[Acts 1925, S.B. 84.]

#### Art. 3861. Regulation

The Railroad Commission of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things, to be received and charged for by each express company, and, which, by the contract of carriage, are to be transported by such express company between points wholly within this State. Such rates shall be made to apply to all such companies, and may be changed or modified by said Commission from time to time in such manner as may become necessary. Said Commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said Commission for the regulation of railroads.

[Acts 1925, S.B. 84.]

#### Art. 3862. Penalty for Overcharge

Every express company doing business in this State which shall demand or receive a greater compensation than that which may be prescribed and fixed by said Commission for the transportation within this State of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not to exceed five hundred dollars for each offense. If it shall appear that such

violation was not wilful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. The said Commission shall have authority and it shall be its duty to sue for the same in such manner as may be prescribed by law for like suits against railroad companies.

[Acts 1925, S.B. 84.]

#### Art. 3863. Powers of Commission

The said Commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said Commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, when applicable, shall be of equal force and effect as to express companies.

[Acts 1925, S.B. 84.]

#### Art. 3864. General Office

Every incorporated express company doing business in this State shall keep a general office in this State at some place on the line of its transportation, in which it shall keep its charter, books, papers, accounts and contracts, or copies thereof, showing the value of its property of all kinds, its receipts and disbursements on account of business done in this State, and its indebtedness. It shall make a full annual statement of all such matters as shown by its books to the Railroad Commission of Texas, and such additional statements as may be required by such Commission, which statements shall be certified to be correct and sworn to by the president and secretary, or general manager in Texas of such company. Such company shall permit any member of the Railroad Commission of Texas or its authorized agent to examine at any time, any and all books, papers and contracts in its said office.

[Acts 1925, S.B. 84.]

#### Art. 3865. To Give Notice, etc.

Every express company doing business in this State shall give notice in writing to the Railroad Commission of the name, and official designation, of the person or persons, officer or officers charged with the management of its general office in this State, the location of its general office in this State, and shall from time to time give like notice in writing of any change in location of such general office, and of the person or persons, officer or officers in charge thereof.

[Acts 1925, S.B. 84.]

**Art. 3866. Penalty**

Failure to comply with any provision of this title shall subject the offending company and any officer, agent, or employé thereof, so offending, to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit therefor. The Railroad Commission shall notify the Attorney General of

any violation of any provision of this title which shall come to its knowledge. In addition to said penalty, a failure to comply with any provision of this title shall be sufficient cause to cancel the permit of any express company so offending.

[Acts 1925, S.B. 84.]



## TITLE 59

# FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF

### Article

- 3867 to 3871. Repealed.  
3871a. Return to Home County of Persons Released from State Schools for Feeble-minded.  
3871b. Mentally Retarded Persons.  
3871c. State School for Mentally Retarded.  
3871d. Additional State School for Mentally Retarded in Gulf Coast Area.  
3871e. Additional State School for Mentally Retarded West of One Hundredth Meridian.  
3871f. Additional State School for Mentally Retarded.  
3871g. Additional State School for Mentally Retarded Persons.

### Abolition

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

Arts. 3867 to 3871. Repealed by Acts 1955, 54th Leg., p. 438, ch. 119, § 25

Art. 3871a. Return to Home County of Persons Released from State Schools for Feeble-minded

Upon determination of a State school for the feeble-minded or mentally retarded that a person who has been committed to its care and custody is no longer in need of special training, special education, treatment, care or control, it shall be the duty of the superintendent to notify the county judge of the county from which such person was committed. It shall be the duty of the county judge, upon receipt of such notification, to provide for the transportation and return of such person to the county from which such person was committed, or to the county where the parents live.

[Acts 1955, 54th Leg., p. 53, ch. 39, § 1.]

Art. 3871b. Mentally Retarded Persons

#### Short Title

Sec. 1. This Act may be referred to as "The Mentally Retarded Persons Act".

#### Purpose

Sec. 2. It is the purpose of this Act to afford mentally retarded Texas citizens an opportunity to develop to the fullest practicable extent their respective mental capacities.

### Definitions

Sec. 3. As used in this Act:

(1) "Mentally retarded person" means any person, other than a mentally ill person, so mentally deficient from any cause as to require special training, education, supervision, treatment, care or control for his own or the community's welfare.

(2) "Texas citizen" means a person who has resided in this State for at least twelve months next preceding the date on which determination is made of whether he is a Texas citizen, or a minor whose parent or guardian has been domiciled in Texas for a like period.

(3) "Board" means the Board for Texas State Hospitals and Special Schools.

(4) "Department" means the State Department of Public Welfare.

### Admission

Sec. 4. Mentally retarded persons shall be admitted to the jurisdiction of the Board by the procedures prescribed in this Act. The judicial procedure for admission established by this Act may be used in all cases. The administrative procedure established by this Act may be used only in certain cases. Nothing herein shall be held to affect or repeal the provisions of any law now existing relating to the appointment of guardians of insane persons or persons of unsound mind. No Texas citizen alleged to be mentally retarded shall be admitted to the jurisdiction of the Board as a mentally retarded person until he has been examined at a diagnostic center of the Board or a diagnostic center approved by the Board.

### Judicial Procedure for Admission

Sec. 5. The county court shall have original jurisdiction of all judicial proceedings for admission of mentally retarded persons to the jurisdiction of the Board. The county courts shall be deemed to be in session at all times for the disposition of these cases. In all applications for judicial admissions any interested person may demand a jury, or the judge of the court on his own motion may order a jury. Any person interested in the application has the right to appear and be represented by counsel.

### Application for Admission

Sec. 6. Any person in the county of residence of an alleged mentally retarded person may file with the county clerk of that county an application to have the alleged mentally retarded person declared mentally retarded and

admitted to the jurisdiction of the Board. The application shall be under oath. Upon the filing of the application the county judge shall set a date for a hearing on the application. The parents or spouse or guardian or nearest relative of the person alleged to be mentally retarded shall be served with a notice of the time and place of the hearing together with a brief statement of the matters stated in the application. If no parent or spouse or guardian or relative of the alleged mentally retarded person can be found, the court shall appoint an attorney to represent the person alleged to be mentally retarded and the notice shall be served upon the attorney.

#### Hearing

Sec. 7. The hearing of the application may be either in the courthouse or at the residence of the alleged mentally retarded person, or that of his parents or spouse or guardian or nearest relative, or at any other place in the county the county judge may regard as best for the welfare of the person alleged to be mentally retarded. It shall be the duty of the county attorney when requested by the court to appear at the hearing on behalf of the person making the application. An affidavit of the person in charge of the examination of the alleged mentally retarded person at the diagnostic center setting forth the conclusions reached as a result of the examination is admissible in evidence at the hearing. The court shall cause this affidavit to be introduced in evidence at the hearing, and shall not render judgment in the matter unless this evidence is available and introduced.

#### Order

Sec. 8. If the person alleged to be mentally retarded is found to be mentally retarded, the court shall enter an order declaring that fact and that the person is admitted to the jurisdiction of the Board. The judge shall cause to be prepared a transcript of the proceedings and evidence, all of which he shall certify to be correct, and shall transmit the same to the Board. If facilities are available for the reception of the mentally retarded person, the Board through its authorized agents shall notify the county judge concerned. The county judge shall arrange to send the mentally retarded person to any institution the Board shall designate.

#### Voluntary Admission Procedure

Sec. 9. (a) Upon the basis of the results of an examination at a diagnostic center of the Department or a diagnostic center approved by the Department, the superintendent of a State school under the control and management of the Texas Department of Mental Health and Mental Retardation may admit a mentally retarded person to the State school of which he is superintendent upon the written application of the parents or a court-appointed guardian of the person.

(b) Except as hereinafter provided, no voluntary student may be detained more than

ninety-six hours after the superintendent has received written notice from the person upon whose application the mentally retarded person was admitted to have the student removed from the State school. If, however, the condition of the person is deemed by the superintendent to be such that he can not be discharged with safety to himself or with safety to the general public the superintendent may forthwith file or cause to be filed an application for judicial admission. For the purpose of this subsection, the county within which the State school is located shall be deemed the county of residence of the student. Pending a final determination on the application, the court shall order the student placed in protective custody in:

(1) a State school, or

(2) a suitable place to be designated by the court, provided no person held under the provisions of this subsection may be confined in a jail unless there be a showing that he is "dangerous to himself or the general public and there is no other suitable place of custody available."

#### Order of Admission

Sec. 10. In determining the order in which eligible persons are admitted to its available facilities the Board shall consider the following factors:

(1) The relative need of the person for special training, education, supervision, treatment, care or control;

(2) The impact of the person upon the community; and

(3) The ability of the person's family to assimilate him effectively into family life.

The provisions of this section shall apply to both judicial and administrative admissions under this Act.

#### Attendance in Public Schools

Sec. 11. Eligibility of a mentally retarded person for admission to the Board's jurisdiction or previous admission to the Board's jurisdiction and subsequent furlough or discharge does not disqualify that person from admission to special education classes in the public schools if the mentally retarded person is of school age and can profit from the course of instruction offered in public school special education classes.

#### Facilities for Mentally Retarded

Sec. 12. The Board shall maintain facilities for mentally retarded persons under its jurisdiction. It may designate the institution in which any mentally retarded person under its jurisdiction is placed, and may designate any institution or part thereof under its management and control as a special facility for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons. The Austin State School and its branches are hereby expressly continued as State facilities under the management and con-

trol of the Board. The Board shall be authorized to maintain in the Austin State School and its branches, and in other special schools under its supervision, day classes for the convenience and benefit of the mentally retarded persons of the communities in which such schools are located when such mentally retarded persons are not capable of being enrolled in regular or special classes of the public school system of such communities.

#### Diagnosis

Sec. 13. The Board shall establish and maintain diagnostic centers in its own institutions. It may approve as diagnostic centers facilities operated by public or private agencies. The Board shall prescribe by regulation the requirements for approval of diagnostic centers not its own. Diagnosis from approved diagnostic centers, when accepted in writing by the Board, shall be equal to diagnosis made by the Board in its own diagnostic centers. The State shall charge for the services rendered in its diagnostic centers, but if the person seeking the services, or his parents, or spouse or guardian are unable to pay the charges the Board shall nevertheless provide the services.

Texas citizens may be admitted to diagnostic centers of the Board or to approved diagnostic centers under regulations to be prescribed by the Board.

After a person alleged to be mentally retarded is examined at a diagnostic center of the Board, or at an approved diagnostic center and the diagnosis of the person made at the approved diagnostic center is accepted in writing by the Board, the Board, through its authorized agents, may if it desires and the diagnosis warrants:

(1) Inform the county judge of the person's county of residence that the person is eligible for admission to the jurisdiction of the Board as a mentally retarded person and forward to the county judge a copy of the findings and diagnosis. In this case the mentally retarded person's parents or spouse or guardian shall likewise be notified of the person's eligibility; or

(2) Inform the parents, or spouse or guardian or responsible relative of the person that the person is eligible for admission to the jurisdiction of the Board for the purpose of receiving special training only. Admission for special training only is to be made under Section 9 of this Act; or

(3) Inform the parents or guardian of the person that the person should be placed in a special education class in the public schools; or

(4) Inform the parents or spouse or guardian of the person of the results of the examination and any recommendations of the staff conducting the examination and rendering the diagnosis.

#### Research

Sec. 14. The Board may, with funds available for such purpose from any source, do research to determine the causes, proper treatment and diagnosis of mental retardation and may use any personnel and facilities under its control and management for carrying out such research.

#### Employment

Sec. 15. When the Board determines that a mentally retarded person under its jurisdiction may profit from being placed on furlough in a work situation, the Board may place this person in employment. The Texas Employment Commission and the Department may cooperate with the Board in the administration of the employment program. The Board shall regulate the terms of the employment and shall supervise the mentally retarded persons so employed.

#### Discharge and Furlough

Sec. 16. All mentally retarded persons admitted to the jurisdiction of the Board shall remain under its control until discharged. Where the Board determines that a mentally retarded person admitted to its jurisdiction is no longer in need of special training, education, supervision, treatment, care or control, the Board may discharge the person. Where the only basis for the Board's jurisdiction over a person is that he is a mentally retarded person and it is found that he is not a mentally retarded person, the Board shall discharge him. The Board may furlough any mentally retarded person admitted to its jurisdiction to that person's parents or spouse or guardian or relatives or other suitable persons for such periods and under such conditions as the Board may prescribe. Persons of school age placed on furlough are eligible to attend public school special education classes if they can profit from the course of instruction offered in public school special education classes.

#### Foster Home Care

Sec. 17. When the Board determines that the welfare of any mentally retarded person under its jurisdiction requires that the person be placed in a foster home for care, the Board shall notify the State Department of Public Welfare. The Department shall endeavor to place the mentally retarded persons referred to it by the Board in suitable foster homes. The owners or operators of approved foster homes shall be instructed by the Department in the matters necessary to insure proper care for the mentally retarded persons.

The Department may render other field and staff services to the Board in a foster home care program. Unless the cost to the Department for services to the Board is provided for by funds expressly appropriated for that purpose, the Board shall reimburse the Department for services rendered under the provisions of the Interagency Cooperation Act, Acts 1953, 53rd Legislature, Chapter 340.<sup>1</sup>

<sup>1</sup> Article 4413(32).

The Board may pay the person or organization furnishing foster home care to any person under this Act a reasonable sum for the care furnished to mentally retarded persons within the limitations of the biennial appropriation Act. The rights of the Board to collect for support, maintenance and treatment of mentally retarded persons admitted to its jurisdiction shall not be affected by the provisions of this section.

Absences

Sec. 18. Any mentally retarded person under the jurisdiction of the Board who is absent from his assigned institution, foster home, employment or special school without permission from the proper authority may be detained by any peace officer. Upon the order of the superintendent of the institution to which the person was assigned or from which he was furnished any peace officer having custody of the absent person shall return the person to the institution or cause him to be returned.

Cooperation with Other Agencies

Sec. 19. The Board shall at all times seek to utilize the most promising and useful methods for the education and training of the mentally retarded. It shall utilize the services and findings of other State and Federal agencies.

Rules and Regulations

Sec. 20. The Board shall establish rules and regulations to enable its personnel to carry out the provisions of this Act; provided, however, that all such rules and regulations shall be approved by and filed with the Attorney General of the State of Texas.

Support and Maintenance

Sec. 21. (a) The parents of a mentally retarded person under 21 years of age who is a student in a state school operated by the Texas Department of Mental Health and Mental Retardation shall pay, if able to do so, such portions of the cost and support and maintenance of the mentally retarded person as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:

Less than \$4,000	\$ 5.00
\$ 4,000-4,999	10.00
5,000-5,999	20.00
6,000-6,999	30.00
7,000-7,999	40.00
8,000-8,999	50.00
9,000-9,999	60.00
10,000-10,999	70.00
11,000-11,999	80.00

The monthly payment per child shall not exceed:

12,000-12,999	90.00
13,000-13,999	100.00
14,000-14,999	110.00
15,000-15,999	120.00
16,000-16,999	130.00
17,000-17,999	140.00
18,000-18,999	150.00
19,000-19,999	160.00
20,000-up	170.00

Provided that no payment under the above schedule shall exceed actual cost to the state per student and if the payment required under this schedule is more than actual cost then the amount paid shall be the actual cost.

(b) Parents of a mentally retarded person who is 21 years of age or older shall not be required to pay for his support and maintenance in a state school as a student, but the mentally retarded person and his estate shall be liable for his support and maintenance regardless of his age.

The unpaid portion of charges for support and maintenance due before the effective date of this amendment under agreements made before the effective date of this amendment shall remain as obligations of parents under previous law, but such pre-existing agreements for payment of support and maintenance shall be in force after the effective date of this amendment only to the extent of parental responsibility set forth in the foregoing formula.

Unpaid charges for support and maintenance accruing after the effective date of this amendment due by parents for the support and maintenance of mentally retarded persons who are minors and students in state schools shall be a claim in favor of the state for such support and maintenance, but only to the following extent:

Such charges shall always constitute a lien in favor of the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift or descent or devise in his parents' estates or any other person's estate.

After a mentally retarded person who is a student in a state school reaches 21 years of age the cost of his support and maintenance may be determined under rules and regulations adopted by the Texas Board of Mental Health and Mental Retardation provided that charges for support and maintenance shall not exceed the actual cost of such support and maintenance and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent or devise in his parents' estates or any other person's estate.

(c) Nothing in this amendment shall alter or amend the liability and responsibility of any parent under orders of a court or otherwise liable for child support payments under the provisions of Article 4639a-1, Revised Civil Statutes of Texas, 1925, as added by Chapter

31, Acts of the 57th Legislature, 1st Called Session, 1961.<sup>1</sup>

<sup>1</sup> Repealed; see, now, Family Code, § 14.01 et seq.

#### Persons Previously Committed

Sec. 22. Persons admitted or committed to the Austin State School or any other institution under the jurisdiction of the Board as feeble minded, under laws previously in force, may be retained under the jurisdiction of the Board. The provisions of this Act shall apply to such persons as far as they may be applicable.

#### Transfer of Mentally Ill Persons

Sec. 22A. The head of a state school for the retarded under the control and management of the Texas Department of Mental Health and Mental Retardation may transfer persons under involuntary commitment to the state school of which he is head to a mental hospital under control and management of the department when an examination of such person indicates symptoms of mental illness to the extent that care, treatment, control and rehabilitation in a state mental hospital would be in the best interest of such person. A certificate evidencing the diagnosis of mental illness and containing the recommendation of the head of the state school that such person be transferred to a designated mental hospital for the mentally ill shall be furnished the committing court. No transfer shall be made until the judge of the committing court has entered an order approving the transfer.

#### Severability

Sec. 23. If any provision of this Act or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

#### Savings Clause

Sec. 24. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the law repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by the provisions of this Act.

Sec. 25. Articles 3233, 3234, 3235, 3236, 3237, 3238, 3867, 3868, 3869, 3870, 3871 of the Revised Statutes of 1925 are repealed.

[Acts 1955, 54th Leg., p. 438, ch. 119; Acts 1963, 58th Leg., p. 62, ch. 42, § 1; Acts 1967, 60th Leg., p. 567, ch. 255, § 1, eff. May 22, 1967; Acts 1967, 60th Leg., p. 1935, ch. 725, § 1, eff. Sept. 1, 1968; Acts 1969, 61st Leg., p. 1031, ch. 334, § 1, eff. Sept. 1, 1969.]

#### Abolition

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

#### Art. 3871c. State School for Mentally Retarded

##### Establishment

Sec. 1. There shall be constructed, established, and maintained an additional school for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons of this State. It shall be known as the State School; that after the said State School has been located, then the name of the city near which it is located shall be added before the words "State School" which shall be its name.

The Board for Texas State Hospitals and Special Schools shall select a site for said school, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, and the same shall contain sufficient land and have utilities readily available. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said school; provided, however, that the Attorney General's Department shall first approve the title to the land so selected by the Board.

##### Buildings

Sec. 2. There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for mentally retarded persons; said buildings are to be provided with modern improvements for furnishing water, heat, ventilation, and sewage.

The Board for Texas State Hospitals and Special Schools shall proceed to prepare plans and specifications for said buildings; and immediately after this Act becomes effective and title to the land designated as the site for said school shall have been approved by the Attorney General as being vested in the State of Texas, and upon the availability of sufficient appropriation, the Board shall contract for the erection of the necessary buildings for the proper operation of said school, as provided by law; and said Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

##### Personnel; Patients

Sec. 3. Upon the completion of the buildings and facilities, the Board for Texas State Hospitals and Special Schools shall appoint such personnel as are necessary to operate and maintain such school and to adequately treat

such persons as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1957, 55th Leg., p. 1202, ch. 399.]

**Art. 3871d. Additional State School for Mentally Retarded in Gulf Coast Area**

**Establishment**

Sec. 1. There shall be constructed, established, and maintained an additional school for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons of this State in the Gulf Coast area. It shall be known as the State School; that after the said State School has been located, then the name of the city near which it is located shall be added before the words "State School" which shall be its name.

The Board for Texas State Hospitals and Special Schools shall select, and acquire by gift or purchase, within the limits of legislative appropriations, a site for said school, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, and the same shall contain sufficient land and have utilities readily available. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said school; provided, however, that the Attorney General's Department shall first approve the title to the land so selected by the Board.

**Buildings**

Sec. 2. There shall be constructed upon said grounds so selected, permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for mentally retarded persons; said buildings are to be provided with modern improvements for furnishing water, heat, ventilation and sewage, within the limits of legislative appropriations.

The plans and specifications for said buildings shall be prepared in the usual manner as provided by law; and immediately after this Act becomes effective and title to the land designated as the site for said school shall have been approved by the Attorney General as being vested in the State of Texas, and upon the availability of sufficient appropriation, the Board shall contract for the erection of the necessary buildings for the proper operation of said school, as provided by law; and said Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

**Personnel; Patients**

Sec. 3. Upon the completion of the buildings and facilities, the Board for Texas State

Hospitals and Special Schools shall appoint such personnel as are necessary to operate and maintain such school and to adequately treat such persons as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1961, 57th Leg., p. 606, ch. 288.]

**Art. 3871e. Additional State School for Mentally Retarded West of One Hundredth Meridian**

**Establishment**

Sec. 1. There shall be constructed, established, and maintained an additional school for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons of this state. It shall be known as the State School; that after the said State School has been located, then the name of the city near which it is located shall be added before the words "State School" which shall be its name. The school shall be located at some point west of the one hundredth meridian, or within any county through which the one hundredth meridian passes.

The Board for Texas State Hospitals and Special Schools shall select and acquire by gift or purchase, within the limits of legislative appropriations, a site for said school, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, and the same shall contain sufficient land and have utilities readily available. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said school; provided, however, that the Attorney General's Department shall first approve the title to the land so selected by the Board.

**Buildings**

Sec. 2. There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for mentally retarded persons; said buildings are to be provided with modern improvements for furnishing water, heat, ventilation and sewage, within the limits of legislative appropriations.

The Board for Texas State Hospitals and Special Schools shall proceed to prepare plans and specifications for said buildings; and immediately after this Act becomes effective and title to the land designated as the site for said school shall have been approved by the Attorney General as being vested in the State of Texas, and upon the availability of sufficient appropriations, the Board shall contract for the erection of the necessary buildings for the proper operation of said school, as provided by

law; and said Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

**Personnel; Patients**

Sec. 3. Upon the completion of the buildings and facilities, the Board for Texas State Hospitals and Special Schools shall appoint such personnel as are necessary to operate and maintain such school and to adequately treat such persons as are admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided for in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1963, 58th Leg., p. 607, ch. 220.]

**Art. 3871f. Additional State Schools for Mentally Retarded**

**Construction, Establishment and Maintenance; Sites**

Sec. 1. There may be constructed, established and maintained additional schools for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons of this state. They shall be known as state schools, and after each state school has been located, then the name of the city at or near which it is located shall be added before the words "State School," which shall be the name in each case.

The Board for Texas State Hospitals and Special Schools shall select and acquire by gift or purchase, within the limits of legislative appropriations, sites for the schools, and the Board, in selecting each site, shall make the selection with a view to its accessibility and convenience to the greatest number of inhabitants. Each site shall have sufficient land and have utilities readily available. The Board shall take title to the land selected for each school in the name of the State of Texas for the use and benefit of the school; provided, however, that the Attorney General's Department shall first approve the title to the land selected by the Board.

**Buildings**

Sec. 2. There shall be constructed upon each site selected permanent, suitable, substantial and fireproof buildings sufficient in all respects to care for mentally retarded persons. The buildings shall be provided with modern improvements for furnishing water, heat, ventilation and sewage, within the limits of legislative appropriations.

The Board for Texas State Hospitals and Special Schools shall proceed to prepare plans and specifications for buildings at each state school. After title for the land for a school shall have been approved by the Attorney General as being vested in the State of Texas, and upon the availability of sufficient appropriations, the Board shall contract for the erection

of necessary buildings for the proper operation of the school, as provided by law; and the Board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

**Personnel; Patients**

Sec. 3. Upon the completion of the buildings and facilities for a school, the Board for Texas State Hospitals and Special Schools shall appoint personnel necessary to operate and maintain the school and to adequately treat persons admitted, within the limits of legislative appropriations. The Board for Texas State Hospitals and Special Schools shall admit persons and shall provide for their care and maintenance under the same laws, rules and regulations as govern the admission and care of mentally retarded persons provided in the General Laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1965, 59th Leg., p. 440, ch. 224.]

**Art. 3871g. Additional State School for Mentally Retarded Persons**

Sec. 1. (a) There shall be constructed, established, and maintained an additional school for the diagnosis, special training, education, supervision, treatment, care, or control of mentally retarded persons of this state. The school shall be located by the Board of Mental Health and Mental Retardation after a survey has been made showing where the school is most needed. After the site for the school has been determined, the name of the city near which it is located shall be added before the words "State School" and shall constitute the name of the facility.

(b) The Texas Board of Mental Health and Mental Retardation shall select and acquire by gift or purchase, within the limits of legislative appropriations, a site for the school, and the board, in selecting the site, shall make the selection with a view to its accessibility and convenience to the greatest number of inhabitants. Each site shall have sufficient land and shall have utilities readily available. The board shall take title to the land selected for the school in the name of the State of Texas for the use and benefit of the school; provided, however, that the Attorney General's Department shall first approve the title to the land selected by the board.

Sec. 2. (a) There shall be constructed on the grounds selected permanent, suitable, substantial, and fireproof buildings sufficient in all respects to care for mentally retarded persons. The buildings are to be provided with modern improvements for furnishing water, heat, ventilation and sewage, within the limits of legislative appropriations.

(b) The Texas Board of Mental Health and Mental Retardation shall proceed to prepare plans and specifications for the buildings; and immediately after this Act becomes effective and title to the land designated as the site for the school shall have been approved by the at-

torney general as being vested in the State of Texas, and upon the availability of sufficient appropriations, the board shall contract for the erection of the necessary buildings for the proper operation of the school, as provided by law; and the board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

Sec. 3. On the completion of the buildings and facilities, the board shall appoint personnel necessary to operate and maintain the

school and to adequately treat persons admitted, within the limits of legislative appropriations. The board shall admit persons and shall provide for their care and maintenance under the same laws, rules, and regulations as govern the admission and care of mentally retarded persons provided for in the general laws of the State of Texas governing institutions for the care of the mentally retarded.

[Acts 1971, 62nd Leg., p. 2610, ch. 857, eff. Aug. 30, 1971.]



# TITLE 60

## FEEDING STUFF

### Article

3872 to 3881d. Repealed.

3881e. Commercial Feed Control Act of 1957.

Arts. 3872 to 3880, 3880-A, 3881, 3881a to 3881d. Repealed by Acts 1957, 55th Leg., p. 35, ch. 23, § 17

Art. 3881e. Commercial Feed Control Act of 1957

### Title

Sec. 1. This Act shall be known and may be cited as the "Texas Commercial Feed Control Act of 1957".

### Administration

Sec. 2. The provisions of this Act shall be administered by the Director of the Texas Agricultural Experiment Station of the State of Texas, hereinafter referred to as the "Director".

### Definitions

Sec. 3. The words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meaning:

(a) The term "commercial feed" includes customer-formula feed as this term is used in this Act and means any material, whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials or elements, or parts thereof intended for use or used as an ingredient or component of a mixture of materials, used as a feed for animals other than man; but the term shall not be construed as including (1) unground hay, (2) planting seed, (3) cottonseed, (4) whole grain not containing chemical adulterants, (5) unadulterated cottonseed, peanut, or rice hulls, (6) feed products produced and sold by farmers, (7) individual mineral substances when not mixed with other material, or (8) materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(b) The term "sell" or "sale" includes exchange.

(c) The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial feeds.

(d) The term "Director" means the Director of the Texas Agricultural Experiment Station, and includes his duly appointed representatives.

(e) The term "person" means an individual of either sex, a firm, broker, jobber, partnership, corporation, company, legal entity, society, or association, and every agent, officer or employee of any thereof. The term imparts both the plural and the singular as the case may be.

(f) The term "container" means any bag, box, barrel, package, carton, object, apparatus, device, appliance or other container into which commercial feed is packed, stored, or placed for handling or transporting.

(g) The term "weight" means weight in the avoirdupois system.

(h) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(i) The term "customer-formula feed" means a mixture of commercial feeds or feed materials, each batch of which is mixed according to the specific instructions of the final purchaser.

(j) The term "brand" means the term, design, or trademark and other specific designation under which an individual commercial feed is distributed in this state.

(k) The terms "label" and "labeling" mean a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed in bulk or with which a customer-formula feed is distributed either in bulk or otherwise.

(l) The term "ton" means a net weight of two thousand pounds avoirdupois.

(m) The term "per cent" or "percentage" means percentage by weight.

(n) The term "official sample" means any sample of feed taken by the Director or his agent and designated as "official" by the Director.

(o) The terms "purchaser" and "customer-buyer" mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

(p) The term "custom-mix" or "custom-mill" means services only.

(q) The term "permit" means a document issued by the Director for the purpose of authorizing the payment of the inspection fee due on commercial feed when the tax is to be paid on the tonnage of feed sold rather than by the purchase of inspection tags (or certificates).

(r) The term "tag (or certificate)" means the tag (or certificate) supplied by the Director and is the method of paying the inspection fee other than by means of the permit.

(s) The term "animal" means any animate being which is not human, having the power of voluntary action.

**Customer-Formula Feed, Special-Formula Feed, Made to Order Feed and Custom-Mixed or Custom-Milled Feeds**

Sec. 4. (a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The term "customer-formula feed" as used in this Act includes "special-formula feed," "made to order feed" and any other terms coming within this definition. Any portion of such a mixture that was produced by the purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture is exempt from payment of the inspection fee, but the name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in Section 6(c) of this Act.

(b) No manufacturer or other person shall mix, mill, process or engage in a practice in the mixing, milling, or preparation of a customer-formula feed unless and until he has complied with the provisions of Section 7 of this Act.

(c) Under Section 3(a) of this Act, the term "commercial feed" is defined to include customer-formula feed. This definition is hereby reaffirmed, and all of the provisions of this Act which apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed".

(d) The terms "custom-mixed," "custom-milled," or similar terms, mean the service rendered a customer or purchaser in the milling, mixing or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, and are not subject to the provisions of this Act.

**Registration**

Sec. 5. (a) Each brand of commercial feed, except customer-formula feed, shall be registered before being offered for sale, sold or otherwise distributed in this state. The application for registration shall be submitted to the Director on forms furnished by the Director, and if the Director so requests, shall also be accompanied by a label or other printed matter describing the product. Upon approval by the Director, a copy of the registration shall be furnished to the applicant if the registration forms are submitted in duplicate. All registrations are considered permanent unless new registrations are called for by the Director or unless cancelled by the registrant. The application shall include the following information:

(1) The name and principal address of the person responsible for distributing the commercial feed;

(2) The name or brand under which the commercial feed is to be sold, offered for sale, delivered or distributed;

(3) The guaranteed analysis, listing:

a. The minimum percentage of crude protein;

b. The minimum percentage of crude fat;

c. The maximum percentage of crude fiber;

(4) When authorized by the Director, in accordance with rules and regulations which he is authorized to issue, the maximum or minimum or the maximum and minimum quantity determinable by laboratory methods of minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals, and other substances, materials, or elements or parts thereof regardless of whether the claim, if any, as to the use and purpose of any such item or items shall be prophylactic, therapeutic, or otherwise. All such items shall, when guaranteed or claimed, be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Director;

(5) The common or usual name of each ingredient used in the manufacture of the commercial feed.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this Act by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a commercial feed may be permitted provided satisfactory evidence is submitted showing that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The Director is empowered to refuse registration of any application not in compliance with all provisions of this Act, and to cancel after thirty (30) days notice any registration when it is subsequently found to be in

violation of any provision of this Act or when he has satisfactory evidence that the registrant has used fraudulent or deceptive practices in attempted evasion of the provisions of this Act or regulations thereunder. Provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard.

(e) If the home office or principal place of business of the applicant for registration of a commercial feed is located outside of the State of Texas, the applicant must deposit with the Director an instrument in writing appointing a resident agent upon whom service may be had in actions filed by the state in the administration and enforcement of the provisions of this Act, or by a claimant for the recovery of damages.

#### Labeling

Sec. 6. (a) Manufacturers or other persons shall, before selling, delivering, or offering for sale any commercial feed in this state except customer-formula feed, have placed on or affixed to the container, on the outside thereof, in one group, in such size type and in such place and order as may be prescribed by the Director, a plainly printed statement in the English language showing:

(1) The net weight of the commercial feed in the container, or a statement to the effect that the net weight is shown on the container, in which case the net weight must be plainly printed in a conspicuous place on the container in type the size of which may be prescribed by the Director;

(2) The information authorized by Section 5(a)(1), (2), (3), (4), and (5) of this Act.

(b) Manufacturers or other persons shall, at the time of delivery of a commercial feed sold in bulk, except customer-formula feed sold in bulk or otherwise, furnish the purchaser a printed or written statement showing the information authorized by Section 5(a)(1), (2), (3), (4), and (5) of this Act.

(c) A customer-formula feed shall be labeled by invoice to show the following:

(1) Name and address of the mixer, miller or processor;

(2) Name and address of the purchaser;

(3) Date of the sale;

(4) Name or brand and number of pounds of each registered commercial feed used in the mixture, and the name and number of pounds of each ingredient added, including the portion, if any, supplied by the purchaser, and shall be in compliance with the provisions of Section 5(a)(4) of this Act; provided, however, that the Director may, only when all ingredients are furnished by the mixer, miller or processor, as an alternate to the method required by the preceding language of this Section 6(c)(4), promulgate procedures and prescribed forms that will permit a customer-formula feed to be invoiced and

labeled by means of an identifying name, number or similar designation in order to eliminate the necessity of itemizing the name and quantity of each separate item or ingredient contained in such a customer-formula feed.

(5) The invoice bearing the above information shall accompany delivery and be supplied to the purchaser at the time of delivery.

#### Inspection Fee

Sec. 7. (a) For the purpose of administering the Texas Commercial Feed Control Act of 1957, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feed manufactured for sale, sold, offered or exposed for sale or otherwise distributed in this state, and the expense of experiments and research relative to the value thereof, persons engaged in the manufacture, sale, or distribution of commercial feeds or the components of commercial feeds shall pay to the Director, at his office in College Station, Texas, an inspection fee of Ten Cents (10¢) per ton on all such commercial feed. The inspection fee herein levied shall be deposited in the State Treasury and shall there be set apart as a special fund to be known as the Feed Control Fund, and shall be used with the approval and consent of the Board of Directors of the Agricultural and Mechanical College of Texas for the purposes stated in this Section 7(a) of this Act.

(b) The procedure for paying the inspection fee of Ten Cents (10¢) per ton shall, subject to the approval and consent of the Director, be either by the use of tax tags (or certificates) or by means of the tonnage reporting system or by a combination of both such procedures, and shall, in addition to regulations which the Director is herewith authorized to issue, be in compliance with all the provisions of this Act.

(c) When the inspection fee is to be paid by the use of the tax tag (or certificate) on any commercial feed which is manufactured for sale, sold, or offered for sale, or otherwise distributed in this state, the manufacturer or any other person who causes it to be manufactured for sale or who sells the same or offers it for sale or makes delivery or distribution of any such commercial feed within the State of Texas, shall affix to each container or package of such commercial feed, except customer-formula feed, and to the invoice of such customer-formula feed distributed in bulk or otherwise, and to the invoice of each lot of such other commercial feed distributed in bulk, a tag (or certificate), to be furnished by the Director, stating that all charges specified in this Article have been paid, and containing the information provided for in Section 6 of this Act. The Director is hereby authorized, empowered, and directed to prescribe the form and denomination of such tags and certificates; provided, however, that if at any time the actual cost to the Feed Control Service of tags (or certificates), including the printing and handling

thereof, should be in excess of fifty percent (50%) of the amount of the inspection fee as provided in this Section 7, the Director may, after giving reasonable notice in such manner as he deems desirable, charge all persons who cause commercial feed to be manufactured, sold, exposed, or offered for sale or otherwise distributed, for the total actual cost of such tags (or certificates) in addition to the inspection fee of Ten Cents (10¢) per ton; and provided further, that on individual containers of five (5) pounds or less, a manufacturer or other person may for each state fiscal year (September 1st to August 31st, inclusive) or any fractional part thereof, pay in advance a fee of Twenty-five Dollars (\$25.00) for each brand of commercial feed manufactured for sale, sold, offered for sale or otherwise distributed in this state, and such manufacturer or other person shall not be required to affix official tags (or certificates) to such containers of the brands of commercial feed so registered.

(d) When the inspection fee is to be paid by means of the Tonnage Reporting System, the Director is authorized, at his discretion and under such rules and regulations as he may promulgate, to prescribe and furnish such forms and to require the filing of such reports, and shall issue permits bearing a number assigned by the Director on application therefor to any person who manufactures, sells, offers for sale, or who otherwise distributes or has available for distribution in this state, regardless of the manner, means or circumstances as to its entry, presence or existence within this state, any commercial feed. Each applicant for the issuance of a permit must deposit with the Director cash in the amount of One Thousand Dollars (\$1,000.00) or securities acceptable to and approved by the Director of a value of at least One Thousand Dollars (\$1,000.00), or must post with the Director a surety bond payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00), executed by a corporate surety company authorized to do business in Texas and approved by the Director, conditioned upon the faithful performance of the provisions of this Article; or must post with the Director a bond with at least two good and sufficient and solvent personal sureties, payable to the State of Texas in the amount of One Thousand Dollars (\$1,000.00) and approved by the Director, conditioned upon the faithful performance of the provisions of this Article. Each such bond shall be in such form and be effective for such period of time as the Director may prescribe. In addition to all other provisions of this Act, each person who is issued a permit to sell, offer for sale, or otherwise distribute commercial feed and pay the inspection fee in accordance with the tonnage reporting system shall:

(1) Maintain and furnish such records as the Director may require to reflect accurately the total tonnage of all feed handled, and the portion of such tonnage that is sold, offered for sale, or otherwise dis-

tributed as commercial feed and is subject to the inspection fee of Ten Cents (10¢) per ton. The Director or his duly authorized representatives shall have permission to examine the records of the permittee at all reasonable times. All records shall be preserved and retained in usable condition, and shall be available for examination by the Director or his representatives for a period of not less than two (2) years unless otherwise authorized by the Director, and the Director may require the retention of such records for a period of more than two years in instances where it is deemed desirable to do so.

(2) File in the office of the Director at College Station, Texas, within thirty (30) days after the close of each quarter year ending with the last day of November, February, May, and August, sworn reports covering the tonnage of all feed sold during the preceding quarter together with the payment of tax due for such quarter. A penalty of ten per cent (10%) of any tax which is not paid within the time allowed shall be added to the amount of the tax due, and the amount of the tax and the penalty shall constitute a debt, and shall be recoverable out of the bond hereinbefore referred to; provided that the Director may, if he deems it desirable to do so, require additional reports for the purpose of identification and verification of records.

(3) When located outside of the State of Texas and when distributing commercial feed in the State of Texas, maintain in the State of Texas the records and information required by this Section 7(d) of this Act or pay all costs incurred in the auditing of records at a location outside of the state. The Director is authorized and directed to revoke the permit and cancel all registrations of any permittee who fails to comply with this requirement. Itemized statements of costs incurred in any such audits shall be furnished the permittee by the Director promptly upon completion of any such audit, and he must pay the same within thirty (30) days from the date of such statement.

(4) Affix to each container or package of such commercial feed, except customer-formula feed, and to the invoice of each lot of commercial feed, except customer-formula feed, sold or otherwise distributed in bulk a printed statement setting forth the information provided for in Section 6(a) and (b) of this Act.

(5) Affix to the invoice of each customer-formula feed sold or otherwise distributed a statement setting forth the information provided for in Section 6(c) of this Act.

(e) Venue of all suits for recovery of taxes and penalties for non-payment of same shall be in Brazos County, Texas.

## Adulteration

Sec. 8. A commercial feed shall be deemed to be adulterated:

(a) When its composition, quantity, or quality falls below or differs from that which it is purported or represented to possess by its labeling;

(b) When it is moldy, sour, heated, or otherwise damaged whereby it is rendered injurious to animals;

(c) When any ingredient has been in whole or in part omitted or extracted therefrom;

(d) When any substance has been substituted wholly or in part therefor;

(e) When damage or inferiority has been concealed in any manner;

(f) When any substance has been added thereto or mixed or packed therewith so as to deceptively increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(g) When it bears or contains any poisonous or deleterious substance which may render it injurious to animals under ordinary conditions of use;

(h) When it bears or contains any added hulls, shells, screenings, straw, stalks, corn cobs, or any other low-grade feeding material or filler, unless the name and percentage of such material are clearly and prominently printed on the label and labeling thereof;

(i) When it consists in whole or in part of any diseased, filthy, putrid, or decomposed substance, unless such substance has been rendered harmless by sterilization or other effective processes;

(j) When it is otherwise unfit for feeding to animals.

## Misbranding

Sec. 9. A commercial feed shall be deemed to be misbranded:

(a) When its container does not bear a tag (or certificate) as required by Section 7(c) of this Act, unless it is in compliance with the provisions of Section 7(d) of this Act;

(b) When its container does not bear the labeling as required by Section 6 of this Act;

(c) When its labeling is false in any particular;

(d) When its container is so made, formed, or filled as to be misleading;

(e) When it purports to be or is represented as a commercial feed for which a definition of identity and a minimum standard have been prescribed by regulation, unless it conforms to such definitions and standards;

(f) When it is not subject to the provisions of this Section 9(e) of this Act, un-

less its label bears the common or usual name of the commercial feed, if any there be, and in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient;

(g) When any medicines, drugs, or any of the other items named in Section 5(a) (4) of this Act are incorporated in such commercial feed, and the quantity of such item and warning statements and directions for use are not shown on the labeling in compliance with regulations issued by the Director.

## Inspection, Sampling, and Analysis

Sec. 10. (a) The Director shall have reasonable access during regular business hours to all places of business, mills, buildings, vehicles, containers, bins, and parcels of whatsoever kind used in the manufacture, transportation, importation, sale or storage of any commercial feed, and shall have the power and authority to inspect each such place, mill, or vehicle, and to open any container, bin or parcel containing or supposed to contain any commercial feed, and to take samples therefrom in the manner prescribed by regulation by the Director as he deems necessary to determine whether such commercial feed is in compliance with the provisions of this Act.

(b) Each such sample shall be taken in the presence of the manufacturer or of any such other person, or in the presence of their representative, and shall be taken from a parcel, lot, or number of parcels in such number and quantity as the Director may determine to be representative of the parcel, lot or number of parcels. When the person in possession of commercial feed refuses to be present and to take part in the sampling of same, the Director may take such samples in the presence of two disinterested witnesses.

(c) In order that each sample may be properly identified with the lot of commercial feed sampled, the Director may examine and make copies of any invoice, transportation record, or other records pertaining thereto.

(d) In the case of bulk lots of feed, a composite sample shall be made up of portions taken at random from not less than four different positions in the bulk lot. The composite sample shall be thoroughly mixed and divided so that each division shall fairly represent the whole, and the said sample or any portion thereof shall be considered the official composite sample of said feed.

(e) Each such sample shall be sealed, with a label placed thereon which states the serial number of the sample and the date that it is taken, and which bears the signature of the person taking the sample, and shall be sent to the Director or his representative. A report stating the name or brand of the commercial feed or material sampled, the serial number, the manufacturer thereof, if known, the name of the person from whose possession the sample was taken, the date and place of taking the

sample, and the name of the person taking the sample, and the name of the person witnessing the taking of the sample, shall also be sent to the Director or his representative.

(f) All analyses of samples shall be made according to the official methods adopted by the Association of Official Agricultural Chemists of North America, and such other methods as the Director may deem authentic by research and investigation.

(g) Each such sample shall be divided into not less than four (4) equal parts. If the Director causes one (1) or more portions of such sample to be analyzed, he shall retain not less than three (3) portions of such sample for the purpose stated in this Section 10(h) of this Act.

(h) In the event the Director finds, through chemical analyses or any other methods or procedure, that a commercial feed is in violation of any provision of this Act, he shall so notify in writing the manufacturer or other person who caused the feed to be sold, offered for sale or otherwise distributed, giving full details. The manufacturer or the person who causes the feed to be sold, offered for sale or otherwise distributed may thereupon, within fifteen (15) days after said notice has been received, request, and the Director shall so direct if requested, that two (2) retained portions of the sample of such feed be submitted for analysis to two (2) qualified chemists selected by the Director, and the Director shall if so requested within the same fifteen (15) day period direct that one (1) retained portion of the sample be furnished such manufacturer or other person. Each of said chemists shall certify in duplicate, under oath, his findings to the Director, whereupon one such duplicate from each chemist shall be forwarded by the Director to the manufacturer or other person. The three (3) chemical analyses thus obtained may be considered in determining whether any violation of this Act has occurred. The manufacturer or other person requesting the analyses shall pay the cost of such analyses except that if it is thus determined that no violation has occurred, the Director shall pay such expense.

#### Rules and Regulations

Sec. 11. The Director is hereby authorized to:

(a) Enforce the provisions of this Act and prescribe and enforce administrative rules and regulations promulgated under the authority of this Act.

(b) Prescribe, adopt, and publish regulations establishing definitions and minimum standards for commercial feed which, to the extent practicable in the discretion of the Director, shall be in harmony with the official pronouncements of the Association of American Feed Control Officials; provided, however, that prior to the issuance of any rules and regulations, the Director shall hold public hearings on any such proposed rules and regulations, the

public hearings to be held pursuant to not less than fifteen (15) days notice in writing. Each such notice shall set forth the time and place of the hearing and a copy of the proposed rules and regulations, and shall be mailed upon request to such organizations which reasonably may be expected to be vitally affected by said proposed rules and regulations.

(c) Rule exempt from the inspection fee provision of this Act any commercial feed manufactured, sold, or delivered solely for investigational, experimental, or laboratory use by qualified persons, when such investigation or experiment is conducted in the public interest.

(d) Publish from time to time such information relative to feeds as he deems necessary or desirable to the public interest; provided, however, that the information concerning production and use of commercial feed shall not disclose the business or financial operations of any person.

#### Detained Commercial Feeds

Sec. 12. (a) Whenever the Director shall find a commercial feed which he has reasonable cause to believe is being sold or offered for sale in violation of any provision of this Act, he shall affix to the container of such feed a written notice stating that such feed has been detained and warning all persons not to dispose of such feed in any manner until permission is given by the Director, or by a court, or until the detainer expires as hereinafter provided. If the Director finds that detained feed is not in violation of any provision of this Act, he shall forthwith remove the detainer notice from such feed. The detainer notice shall expire and shall become a nullity at the expiration of ten (10) days after it is affixed to any feed unless prior to such time the Director has instituted proceedings to condemn such feed pursuant to the provisions of this Section 12(b) of this Act.

(b) If detained commercial feed is found, after examination and analysis, to be in violation of any provision of this Act, the Director shall petition the district or county court in whose jurisdiction the feed is located for an order for condemnation and confiscation of such feed. If it be determined by the court that the commercial feed violates any provision of this Act, such feed shall be disposed of by destruction or by sale in accordance with the judgment of the court, and if the feed is sold, the proceeds from such sale, less court costs and charges, shall be paid into the State Treasury. Provided, however, that when the violation of this Act which is found by the court with respect to such feed can be corrected by proper processing or labeling, the court, after entry of the decree and after all costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such feed shall be properly processed or labeled, has been executed, shall make an order directing that

such feed be delivered to the owner thereof for such processing or labeling under the supervision of the Director. The expense of such supervision shall be paid by the owner of the feed. The bond shall be returned to the owner when the Director notifies the court that the feed is no longer in violation of this Act, and that the supervision expense aforesaid has been paid.

#### Unlawful Acts

Sec. 13. It is hereby declared unlawful for any person to commit any of the following acts, or to conspire to commit any of such acts, or to cause any of such acts to be committed within the State of Texas:

(a) To engage in the preparation, manufacture, sale, exposure, or offer for sale or otherwise distribute a customer-formula feed in violation of any of the provisions of Section 4 or any other Section applicable to customer-formula feed;

(b) To sell, offer, expose, or distribute for sale any commercial feed, except customer-formula feed, without registering with the Director as provided for in Section 5 hereof;

(c) To sell, offer, expose, or distribute for sale any product used or intended for use as a feed for animals unless the provisions of Section 6 hereof have been conformed to with respect to such product;

(d) To sell, offer, expose, or distribute for sale any commercial feed unless the inspection fee is paid and all other provisions of Section 7 hereof have been conformed to with respect to such feed;

(e) To sell, offer, expose, or distribute for sale any commercial feed which is not labeled in accordance with the provisions of Section 6 hereof;

(f) To sell, offer, expose, or distribute for sale any commercial feed which is adulterated within the meaning of Section 8 hereof;

(g) To sell, offer, expose, or distribute for sale any commercial feed which is misbranded within the meaning of Section 9 hereof;

(h) To refuse to permit entry or inspection, or to refuse to permit the acquisition of samples and the examining and the copying of invoices and transportation records, of a commercial feed, or otherwise fail to comply with the provisions of Section 10 hereof;

(i) To refuse to make records available, furnish reports, pay the inspection fee, permit the examination of records, or otherwise fail to comply with the provisions of Section 7(d) of this Act;

(j) To dispose of a detained commercial feed in violation of Section 12 hereof.

#### Penalties

Sec. 14. (a) Any person who performs any act herein declared to be unlawful, or who

causes such act to be performed or who conspires to perform such act, shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00). Before the Director reports a violation for such prosecution, an opportunity shall be given the distributor to present his views.

(b) Any person who violates any of the provisions of this Act shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), and each separate violation shall constitute a separate offense.

(c) The venue for any and all criminal prosecution and civil suits instituted under the provisions of this Act shall be in the county in which the commercial feed is located at the time the alleged violation is discovered by or otherwise made known to the Director or his representative, except as provided for in Section 7(e) of this Act.

(d) If the Director deems any violation of this Act to be of a minor nature, and if he is of the opinion that the public interest will be served and protected by the issuance of a written warning to the violator, he shall have discretion to forego the filing of any criminal or condemnation proceeding with respect to such violation, and to refrain from taking any further administrative action relative thereto.

(e) It shall be the duty of each district attorney, criminal district attorney, or county attorney, to whom the Director or his duly appointed representative reports any violation of this Act, to cause appropriate proceedings to be instituted and prosecuted in the proper courts without delay in the manner provided by law.

(f) The Director is authorized to cancel all registrations and revoke the permit of and refuse to issue tags (or certificates) to any manufacturer or other person who fails to comply with any of the provisions of this Act or any rules or regulations issued under authority of this Act.

#### Publications

Sec. 15. The Director shall publish at least once a year, in such form as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold, offered for sale, or otherwise distributed within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that information concerning production and use of commercial feed shall not disclose the scope of operations of any person.

#### Pending Court Cases

Sec. 16. Any court cases which are pending on the effective date of this Act shall not be affected by the passage of this Act, but shall

be acted upon in accordance with the provisions of Title 17, Revised Criminal Statutes, 1925, as amended, and Title 60, Revised Civil Statutes, 1925, as amended.

**Repeal of Prior and Conflicting Laws**

Sec. 17. Articles 1489 to 1498, inclusive, of the Penal Code of the State of Texas (1925) as amended by Chapter 333, Acts of the 53rd Legislature, Regular Session; Articles 3872 to 3881d, inclusive, of the Revised Civil Statutes of Texas (1925) as amended by Chapter 14, Acts of the 40th Legislature, Regular Session (1927), Chapter 61, Acts of the 45th Legislature, 2nd Called Session (1937), Chapter 374, Acts of the 50th Legislature, Regular Session (1947), and Chapter 333, Acts of the 53rd Legislature, Regular Session (1953), are superseded by this Act and are hereby repealed. All other laws and parts of laws in conflict herewith are hereby repealed insofar as they are in conflict.

**Certain Exemptions from Livestock Remedy Act**

Sec. 18. Any substance, material or product, or part or combination thereof, which is regulated by the provisions of this Act is hereby expressly exempted from the provisions of Chapter 94, Senate Bill No. 75, Acts of the 49th Legislature, Regular Session (1945), codified in Vernon's Texas Civil Statutes, 1948, as Article 192-1, Texas Livestock Remedy Act.

**Appeal**

Sec. 19. Any person at interest aggrieved by any order or ruling of the Director may appeal from such order or ruling to the district court in the county of his residence by filing a petition in such district court within twenty (20) days from the date of such ruling or order. The action shall be tried and determined as in other civil causes, but the burden of proof shall rest upon the person appealing to show the regulation, order, ruling, acts, or charges complained of are unreasonable and unjust to him and constitute a gross abuse of the discretion vested in the Director. Either party to the action may appeal the decision of the district court to the appellate court having jurisdiction of the cause.

**Constitutionality**

Sec. 20. If any provision of this Act is declared unconstitutional or if the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons or circumstances shall not be affected thereby; and the Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause and phrase hereof regardless of the fact that the Act might not validly be applicable to certain persons or circumstances.

[Acts 1957, 55th Leg., p. 35, ch. 23.]



# TITLE 61

## FEES OF OFFICE

Chapter	Article
1. General Provisions .....	3882
2. Enumeration .....	3913

### CHAPTER ONE. GENERAL PROVISIONS

**Article**

- 3882. To Take Out Commission.
- 3883. Maximum Fees.
- 3883a, 3883b. Repealed.
- 3883c. County Judge, Sheriff, District Attorney, Assessor, and Other Officers in Counties of 250,000 to 325,000 Population.
- 3883c-1. County Judge, County Attorney, County Clerk, Sheriff, Assessor, and Collector in Counties of 18,528 to 18,535.
- 3883c-2. Salary of County Judges in Counties of 14,400 to 14,500.
- 3883c-3. Salary of County Judges in Counties of 91,000 to 97,500 and 122,000 to 140,000.
- 3883d. Sheriff, Tax Assessor-Collector, County Clerk, County Judge and Other Officers in Counties of 48,530 to 48,930.
- 3883e. Tax Assessor-Collector in Counties of 70,000 to 80,000 and with \$40,000,000 Assessed Valuation.
- 3883f. Tax Assessor-Collector in Counties of 18,500 to 18,900 and with \$14,000,000 to \$15,500,000 Assessed Valuation.
- 3883f-1. Repealed.
- 3883f-2. Tax Assessor-Collector in Counties of Not Less Than 600,000 nor More Than 900,000 Population.
- 3883g. County Judge, Sheriff, and Certain Other Officers in Counties of 145,000 to 250,000.
- 3883h. Maximum Compensation on Fee Basis of Certain Officers; Counties of Less Than 20,000.
- 3883i. Maximum and Minimum Salaries; Certain Precinct, County and District Officials in Certain Counties.
- 3883i-1. Compensation of Officers of Counties of 375,000 to 650,000.
- 3883i-2. Compensation of Judges; Counties of Not Less Than 1,500,000.
- 3884. Repealed.
- 3885. District Attorneys of Districts of Two or More Counties.
- 3886. District and County Attorneys of Large Counties.
- 3886a. Assistants and Other Appointments by District and County Attorneys in Counties of 125,001 to 150,000.
- 3886b. Appointment and Salaries of Assistant County Attorneys in Counties of Over 125,000 Having No District or Criminal District Attorney.
- 3886b-1. Salaries of County Attorneys, Assistants, Investigators and Judges in Counties of 86,000 to 91,000.
- 3886b-2. Assistant County Attorneys in Counties of 250,000 to 300,000; Appointment and Salaries.
- 3886b-3. Salaries of Assistant County Attorneys in Counties of 74,000 to 75,800.
- 3886c. Assistant Criminal District Attorneys and Other Appointees in Counties of Over 355,000.
- 3886d. Investigators and Stenographers for District Attorneys in Counties of Less Than 30,000.
- 3886e. Court Reporter; Salary.
- 3886f. Compensation of District Attorneys.

**Article**

- 3886g. Supplemental Salary of District Attorney in 72nd District.
- 3886h. Compensation of District Attorney and Assistants in 34th District.
- 3886i. District Attorneys in Counties of 600,000 to 700,000; Salary.
- 3886j. District Attorneys and Criminal District Attorneys in Counties of 600,000 to 700,000.
- 3886k. District Attorneys and Criminal District Attorneys in Counties of Not Less Than 1,200,000; Compensation; Private Practice.
- 3887. County Attorney.
- 3887a. Compensation of County Attorneys in Counties of 48,540 to 48,800.
- 3887a-1. County Attorneys in Counties of 71,100 to 71,200; Compensation; Private Practice.
- 3887a-2. Compensation of County Attorneys in Counties of 300,000 to 500,000.
- 3887a-3. County Attorneys in Counties of Not Less Than 1,500,000; Compensation; Private Practice.
- 3887b. Counties of 650,000 or More; Salary; Assistants.
- 3888 to 3888b. Repealed.
- 3889. Census to Govern.
- 3890. State or County Not Liable.
- 3891. Disposition of Fees; Increase of Compensation of Officers.
- 3892. Failure to Collect Maximum.
- 3893. District Clerks.
- 3894. Repealed.
- 3895. Ex-officio Services.
- 3896. To Keep Accounts.
- 3897. Sworn Statement.
- 3898. Fiscal Year.
- 3899. Expense Account.
- 3899a. Repealed.
- 3899b. Offices, Office Supplies, Furniture and Automobiles; Aid for District Attorneys.
- 3899b-1. Automobile Expense Allowances for Tax Assessors and Collectors in Counties of 15,500 to 15,700.
- 3899c, 3900. Repealed.
- 3901. Collector and Assessor.
- 3901-1. Maximum Fees of Assessor-Collector in Counties of 13,350 to 13,440 Population.
- 3902. Deputies, Assistants or Clerks; Appointment; Compensation and Salaries; Increase.
- 3902a to 3902f. Repealed.
- 3902f-1. Increase of Compensation of Deputies, Clerks and Assistants by Commissioners Court.
- 3902f-2. Counties of 11,400 to 11,500; Compensation of Deputies, Clerks and Assistants.
- 3902f-3. Counties of 29,300 to 31,000; Compensation of Deputies, Assistants, Clerks or Stenographers.
- 3902f-4. Counties of 96,000 to 97,500; Increase in Compensation of Chief Deputies.
- 3902f-5. Deputies, Assistants and Clerks of District, County or Precinct Officers; Increase in Compensation.
- 3902f-6. Counties of 86,000 to 91,000; Compensation of Deputies, Assistants, Clerks and Secretaries.
- 3902f-7. Counties of 22,720 to 23,300; Compensation of Deputies, Assistants or Clerks.
- 3902g. Deputy Sheriffs in Counties Over 48,000.
- 3902h. Deputy Assessor-Collector of Taxes in Counties of 140,000 to 220,000.

## Article

- 3902h-1. Deputy Assessor-Collector of Taxes in Counties with Assessed Valuation of \$20,000,000 to \$25,000,000.
- 3902h-2. Chief Deputy Assessor and Collector in Counties Over 150,000.
- 3902i. Counties of 35,000 to 40,000; First Assistant or Chief Deputy to County Clerk.
- 3902j. Deputies, Assistants and Clerks of County or Precinct Officers; Increase of Compensation.
3903. Special Deputy District Clerk.
- 3903a. Special Deputy District Clerks in Counties Over 355,000.
- 3903b. Special Deputy in Counties of More Than 132,000 and Less Than 150,000, Salary.
- 3903c. Assistant to County Judge in Counties of 48,600 to 49,000; Salary.
- 3903d. Assistant to County Judge in Certain Counties Over 90,000; Secretary in Lieu of Stenographer.
- 3903e. Seasonal Help for District Clerk; Counties of 30,400 to 31,150.
- 3903f. Salaries of District Clerks in Counties of 145,000 to 150,000.
3904. No Fee Allowed.
3905. Fee for Acknowledgment.
3906. Repealed.
3907. Fee Book.
3908. To Itemize Costs.
3909. Extortion.
3910. Fees Posted.
- 3911, 3912. Repealed.
- 3912a. County Judge as Budget Officer in Counties of 300,000; Compensation of Officers; Preparation.
- 3912a-1. County Judge as Budget Officer in Counties of 7,050 to 7,075; Compensation.
- 3912b. Unconstitutional.
- 3912c. Compensation of County Judge in Counties of 195,000 to 200,000; Stenographer; Salary.
- 3912c-1. Compensation of County Judges in Counties of 141,000 to 152,000.
- 3912d. Compensation of Officers in Counties of 355,000 or Over.
- 3912e. Method of Compensation of District and Certain Designated County and Precinct Officers.
- 3912e-1. Compensation of Designated Officers in Counties of 225,000 to 500,000.
- 3912e-2. Compensation of Certain District, County and Precinct Officers in Counties of 355,000; Appointment of Assistants to District Attorneys.
- 3912e-3. Salary of County Judge in Counties of 12,227 to 12,230.
- 3912e-4. District, County and Precinct Officers in Counties of Over 500,000, Payment of Assistants and Expenses of Conduct of Offices.
- 3912e-4a. District and County Officers in Counties of Over 500,000; Compensation; Assistants to County Treasurer and District Attorneys.
- 3912e-4b. Application of Art. 3912e-4a Extended.
- 3912e-4c. District, County and Precinct Officers in Counties of 600,000 or More.
- 3912e-4d. Counties of 500,000 or More; District, County and Precinct Officers, Deputies and Employees.
- 3912e-5. Additional Salary to County Judge in Counties of 105,000 to 125,000 as Member of Juvenile Board.
- 3912e-5a. Repealed.
- 3912e-5b. Additional Compensation for Lubbock County Judge as Member of Juvenile Board.
- 3912e-5c. Additional Compensation for Bexar County Judge as Member of Juvenile Board.
- 3912e-5d. Additional Compensation for Tarrant County Judge as Member of Juvenile Board.
- 3912e-5e. Additional Compensation for Brazoria County Judge as Member of Juvenile Board.

## Article

- 3912e-6. Salaries of Officers in Counties of 100,000 to 190,000 to be Computed at Maximum Allowable Under Laws Existing August 24, 1935.
- 3912e-7. Salaries of Certain Officers in Counties of 100,000 to 190,000.
- 3912e-8. Counties Over 190,000; Salaries of County Attorneys; Assistants; Stenographers.
- 3912e-9. Salaries of Certain Officers in Counties of 300,000 to 500,000.
- 3912e-10. Repealed.
- 3912e-11. Counties of 300,000 to 500,000, Salaries of Certain Officers In.
- 3912e-12. Counties Over 20,000; Salary Basis; Fixing of Salaries.
- 3912e-13. Counties of 300,000 to 500,000; Appointment and Compensation of Deputies, Assistants and Employees.
- 3912e-14. Counties of Over 350,000; Assistants of District Attorneys and Criminal District Attorneys.
- 3912e-15. Counties of 301,000 to 398,000; Compensation of Employees, Deputies and Assistants.
- 3912e-16. County Officers in Counties of 90,000 to 145,000; County Attorneys in Counties of 145,000 to 250,000.
- 3912e-17. Counties of 4,660 to 4,740; Compensation of Officials.
- 3912e-18. Counties of 11,700 to 11,800, 10,300 to 10,372 and 9,500 to 9,700; Compensation of Officials.
- 3912e-19. Counties of 13,500 to 13,800; Compensation of Officials.
- 3912e-20. Counties of 4,000 to 4,200; Compensation of Officials.
- 3912e-21. Counties of 18,200 to 18,600; Compensation of Officials and Employees.
- 3912e-22. Counties of 49,400 to 50,000; Compensation of Officials.
- 3912e-23. Counties of 91,000 to 97,500 and 122,000 to 140,000; Compensation of Officials.
- 3912e-24. Counties of 160,000 to 170,000; Compensation of Officials.
- 3912e-25. District and County Clerks in all Counties; Automobile Expense Allowance.
- 3912e-26. Counties of 52,300 to 57,000; Compensation of Officials.
- 3912e-27. Counties of 18,200 to 18,600; Compensation of Officers and Employees.
- 3912e-28. Counties of 16,150 to 16,350; Compensation of Officials.
- 3912f-1. Salaries of Sheriffs and Deputies in Counties of 27,235 to 27,300; Appointment of Deputies.
- 3912f-2. Salary of Chief Deputy in Office of Sheriff, Tax Collector and Assessor in Counties of 6,000 to 6,200.
- 3912f-3. Salaries of Sheriffs and Deputies in Counties of 25,600 to 25,889 in Which There are No District Attorneys.
- 3912f-4. Salaries of Sheriffs and Deputies in Counties of 43,900 to 44,000.
- 3912f-5. Salaries of Deputy Sheriffs in Certain Counties.
- 3912f-6. Salaries of Deputy Sheriffs in Counties of 46,700 to 47,900.
- 3912f-7. Longevity Pay for Deputy Sheriffs in Counties of Not Less Than 150,000.
- 3912g. Increase of Compensation of Precinct, County and District Officers and Employees.
- 3912h. Salaries in Counties of 398,000 or More.
- 3912i. Maximum Salaries of Justices of the Peace and Constables; Precinct Officers; Certain Counties.
- 3912j. Counties of 750,000 to 1,000,000; Salaries of County Road Engineers.
- 3912k. County and Precinct Officials and Employees Who Are Paid Wholly From County Funds; Compensation, Expenses and Allowances.

**Repealer**

*Acts 1971, 62nd Leg., p. 2019, ch. 622, providing for the setting of compensation, expenses and allowances for certain county and precinct officials and employees by the commissioners court effective January 1, 1972, provides in section 8 thereof that to the extent any local, special, or general law, including Acts of the 1971 Legislature, prescribes such compensation, expenses and allowances for any official or employee covered by this Act, that law is repealed. See article 3912k.*

**Art. 3882. To Take Out Commission**

No official who fails or refuses to take out a commission shall be entitled to collect or receive either from the State or from individuals any money as fees of office or compensation for official services. Neither the Comptroller, commissioners court, county auditor nor any other person shall approve or pay any claim or account in favor of any such officer who has so failed or refused. The Secretary of State shall from time to time, as such commissions are issued by him, furnish a list thereof to each commissioners court, each county auditor and to the Comptroller, with the name of the county in which such officers reside. Each State, district, county and precinct officer is required to apply for and receive his commission.

[Acts 1925, S.B. 84.]

**Art. 3883. Maximum Fees**

Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

1. In counties containing twenty five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-four Hundred (\$2400.00) Dollars each; Justice of the Peace and Constable, Twelve Hundred (\$1200.00) Dollars each.

2. In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, and in which there is no city containing twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-seven Hundred and Fifty Dollars (\$2750) each; Justice of the Peace and Constable, Fifteen Hundred Dollars (\$1500) each; provided, however, that in all counties with a taxable valuation for county purposes of not less than Fifty-one Million, One Hundred Thousand Dollars (\$51,100,000) nor more than Fifty-one Mil-

lion, Four Hundred Thousand Dollars (\$51,400,000), and in all counties with a taxable valuation for county purposes of not less than Twenty-seven Million, Nine Hundred and Fifty Thousand Dollars (\$27,950,000) nor more than Twenty-seven Million, Nine Hundred and Sixty Thousand Dollars (\$27,960,000), according to the tax rolls as prepared by the Tax Assessor-Collector of the respective counties for the current year 1938, the county Commissioners Courts in such counties shall have the power to set and establish annually the maximum amount of the fees collected by the Justices of the Peace and Constables which shall be retained by such officers as compensation for their services; provided, however, that the maximum amount so set and established by the county Commissioners Courts as the amount to be retained by such officers shall in no event exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, and provided further, that the compensation for such officers as provided for herein shall be due and payable the first of each month, and the pro rata compensation or fees to be retained for any quarter of the fiscal year shall in no event exceed Nine Hundred Dollars (\$900) and such Nine Hundred Dollars (\$900) shall be paid only out of fees collected by such officers during the quarter to which such Nine Hundred Dollars (\$900) limit applies, and in the event the county Commissioners Courts of such counties shall set and establish the maximum amount of fees to be retained by such officers at an amount less than Three Thousand, Six Hundred Dollars (\$3,600) then the same provisions, conditions, and limitations as set out above shall be applicable and shall be applied to any and all such lesser payments as may be provided by the county Commissioners Courts of such counties.

2-a. In counties containing less than thirty-five thousand (35,000) inhabitants and with a tax valuation, according to the last approved tax roll, in excess of Seventy-eight Million Dollars (\$78,000,000) the District or Criminal District Attorney shall receive an annual fee not to exceed Four Thousand, Two Hundred and Fifty Dollars (\$4,250) out of the fees of office except as provided in Article 3891 for the retention of excess fees of office for counties of like population and in no event shall the maximum salary received exceed Four Thousand, Five Hundred Dollars (\$4,500).

3. In counties containing as many as thirty-seven thousand, five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, or containing a city of over twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk,

Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Thirty-five Hundred Dollars (\$3500) each; Justice of the Peace and Constable, Twenty-four Hundred Dollars (\$2400) each.

4. In counties containing sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Four Thousand (\$4000.00) Dollars each; Justice of the Peace and Constable, Twenty-one Hundred (\$2100.00) Dollars each.

5. In counties containing as many as one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Forty-five Hundred (\$4500.00) Dollars each; Justice of the Peace and Constable, Twenty-five Hundred (\$2500.00) Dollars each.

6. In counties containing as many as one hundred and fifty thousand and one (150,001) or more inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Fifty-five Hundred (\$5500.00) Dollars each; Justice of the Peace and Constable, Three Thousand (\$3000.00) Dollars each.

6a. Provided that in counties in this State having assessed tax valuation of more than Ninety Million Dollars (\$90,000,000), according to the tax rolls for the last preceding calendar year and having a population of less than thirty thousand (30,000) inhabitants according to the last preceding Federal Census, the Justices of Peace and Constables in such counties may receive and retain maximum fees of Three Thousand Dollars (\$3,000) per year. Such Justices of the Peace and Constables shall also receive and retain one-third of excess fees as said term is defined in Article 3891, Revised Civil Statutes, 1925, as amended by Chapter 220, Acts of the Regular Session of the Forty-third Legislature, until such one-third amounts to Six Hundred Dollars (\$600).

7. Provided that in any county in this State having a population of not less than fifty-one thousand, seven hundred and seventy-nine (51,779) nor more than fifty-two thousand, seven hundred and seventy-nine (52,779), according to the last preceding Federal Census of the United States, Justices of the Peace and Constables shall have and receive as fees of office Twenty-

seven Hundred and Fifty Dollars (\$2750) each per annum. Provided that such Justices of the Peace and Constables shall also receive excess fees in addition thereto by retaining one-third of such excess fees until such one-third of such excess fees, together with the said amount of Twenty-seven Hundred and Fifty Dollars (\$2750), equals the sum of Three Thousand Dollars (\$3,000).

8. Provided that in any county in this State having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) nor more than eighty-eight thousand, seven hundred and fifty (88,750), according to the last preceding Federal Census of the United States, Justices of the Peace and Constables shall have and receive as fees of office Twenty-seven Hundred and Fifty Dollars (\$2750) each per annum. Provided that such Justices of the Peace and Constables shall also receive excess fees in addition thereto by retaining one-third of such excess fees until such one-third of such excess fees, together with the said amount of Twenty-seven Hundred and Fifty Dollars (\$2750), equals the sum of Three Thousand Dollars (\$3,000).

Provided, however, in any county in this State having a population less than thirty-five thousand (35,000) inhabitants, and which has a tax valuation exceeding forty million (\$40,000,000.00) Dollars, according to the last tax roll, approved as required by law, the officers herein enumerated shall receive the maximum set forth in Section 3 of Article 3883 as herein amended, and shall also receive excess fees as provided in counties containing a population of between thirty-seven thousand five hundred and one (37,501) and less than sixty thousand (60,000) inhabitants, as provided in Article 3891 as herein amended.

Provided, however, in any county in this State having a population less than twenty thousand (20,000) inhabitants, and which has a tax valuation of not less than Seventeen Million (\$17,000,000.00) Dollars and not exceeding Twenty-five Million (\$25,000,000.00) Dollars according to the last approved tax roll, and with a total area of not less than nine hundred fifty (950) square miles and not exceeding nine hundred eighty (980) square miles, the officers herein enumerated shall receive the maximum set forth in Section 3 Article 3883 as herein amended, and shall also receive excess fees as provided in counties containing a population of between thirty-seven thousand five hundred and one (37,501) and less than sixty thousand (60,000) inhabitants, as provided in Article 3891 as herein amended.

Compensation herein fixed for Sheriff of any county shall be exclusive of any reward or rewards received for the apprehension of criminals or fugitives from justice, and rewards received for the recovery of stolen property. The maximum fixed for the compensation of each

District or Criminal District Attorney shall be inclusive of the salary allowed by the Constitution. However, the maximum herein fixed for District or Criminal District Attorneys applies only to those District or Criminal District Attorneys receiving their compensation under the provisions of Articles 1024 and 1025 of the Code of Criminal Procedure, 1925, and shall not apply to District Attorneys in judicial districts composed of two or more counties whose compensation is otherwise provided.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 11; Acts 1931, 42nd Leg., p. 822, ch. 340, § 1; Acts 1933, 43rd Leg., p. 734, ch. 220, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 123, ch. 59, § 1; Acts 1935, 44th Leg., p. 483, ch. 197, § 1; Acts 1935, 44th Leg., p. 707, ch. 303, § 1; Acts 1935, 44th Leg., p. 724, ch. 315, § 1; Acts 1937, 45th Leg., p. 574, ch. 284, § 1; Acts 1937, 45th Leg., p. 798, ch. 391, §§ 1, 2; Acts 1939, 46th Leg., Spec.Laws, p. 735, §§ 1, 2; Acts 1939, 46th Leg., Spec.Laws, p. 737, § 1; Acts 1945, 49th Leg., p. 541, ch. 327, § 1.]

**Repeal**

*Article 3883, as amended, is repealed in so far as the provisions thereof are applicable to the officers named in article 3883h. See article 3883h, § 6, post.*

**Art. 3883a. Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9**

**Art. 3883b. Repealed by Acts 1937, 45th Leg., p. 602, ch. 302, § 1**

**Art. 3883c. County Judge, Sheriff, District Attorney, Assessor, and Other Officers in Counties of 250,000 to 325,000 Population**

**Compensation; Payment of Fees**

Sec. 1. The County Judge, Sheriff, District Attorney, or Criminal District Attorney, as the case may be, County Clerk, District Clerk, and the Assessor and Collector of Taxes; in any county having a population of more than two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding, or future Federal Census, shall receive a salary of Seven Thousand Four Hundred (\$7,400.00) Dollars per annum from the Officer's Salary Fund, or General Fund, as the case may be; and the Seven Thousand Four Hundred (\$7,400.00) Dollars salary shall include the compensation to the County Judge allowed in Senate Bill 186, 45th Legislature, Regular Session, Acts 1937;<sup>1</sup> the compensation herein fixed for the Sheriff shall be exclusive of any reward received for the apprehension of criminal fugitives from justice, and reward received from the recovery of stolen property; and the per capita payments made by the State to the Counties in lieu of felony fees formerly paid to the officers shall be apportioned by the Commissioners' Courts as follows: after paying the fees to precinct officers rendering service in felony cases, pay to the District Clerk and the Sheriff the same amount each officer earned in felony fees during the year 1935, and the remaining balance

shall be paid to the District Attorney or Criminal District Attorney, as the case may be; and in all such Counties the County Auditor shall receive a salary of Six Thousand (\$6,000.00) Dollars per annum, to be paid from the General Fund of the County, and the County Commissioners in such Counties shall receive a salary of Forty-eight Hundred (\$4,800.00) Dollars annually, payable monthly from the Road and Bridge Fund of such County.

**Sworn Statement; Failure to File; Proceedings to Collect Unreported Fees**

Sec. 2. In all counties having a population in excess of two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, each District, County, and Precinct Officer, except the County Treasurer and County Commissioners, at the close of each fiscal year (December 31) shall make to the District Court of such County a sworn statement in triplicate, on forms designed and approved by the County Auditor, a copy of which statement shall be forwarded to the State Auditor by the Clerk of the District Court of said County within fifteen (15) days after the same has been filed in his office, and one copy shall be filed with the County Auditor. Said report shall show the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall show the names of Deputies and Assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said report shall be filed not later than January 15th following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The County Auditor shall audit such report, also any and all books authorized by Section "N" or any other Section of this Act daily, monthly, or annually that he shall deem necessary and shall file his report with the Commissioners' Court and file with the District or Criminal District Attorney a detailed report of all fees, commissions, and compensation collected by said Officers and not reported by them; also list of cases filed since January 1, 1936, in which any County or District Clerk or Justice of the Peace has not taken adequate security for costs or required a pauper's oath.

It shall be the duty of the District or Criminal District Attorney to institute proceedings for the collection of such fees, commissions, and compensations collected by such Officer and not reported, all of which are declared to be the property of the county and shall be deposited in the General Fund.

**Repeal of Conflicting Laws**

Sec. 3. It is hereby declared to be the intention of the Legislature that the provisions of this Section control in all things as to the Counties affected hereby, and any and all laws in conflict herewith, are hereby expressly repealed to the extent of each conflict.

[Acts 1937, 45th Leg., p. 1274, ch. 476.]

<sup>1</sup> Article 5142b.

**Art. 3883c-1. County Judge, County Attorney, County Clerk, Sheriff, Assessor, and Collector in Counties of 18,528 to 18,535**

In all counties in this State having a population of not less than eighteen thousand five hundred twenty-eight (18,528) and not more than eighteen thousand five hundred thirty-five (18,535) according to the last preceding Federal Census, the County Judge, the County Attorney, County Clerk, County Sheriff, Tax Assessor and Tax Collector shall receive maximum fees of Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars each per year; the Justice of Peace and Constable One Thousand Five Hundred (\$1,500.00) Dollars each per year.

[Acts 1939, 46th Leg., Spec.Laws, p. 734, § 1.]

**Art. 3883c-2. Salary of County Judges in Counties of 14,400 to 14,500**

In any county having a population of not less than 14,400 nor more than 14,500 according to the last preceding federal census, the County Judge may be paid a salary of not more than \$12,000 a year as determined by the Commissioners Court.

[Acts 1969, 61st Leg., p. 1655, ch. 519, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1841, ch. 542, § 99, eff. Sept. 1, 1971.]

**Art. 3883c-3. Salary of County Judges in Counties of 91,000 to 97,500 and 122,000 to 140,000**

The County Judge of any county having a population of not less than 91,000 nor more than 97,500 or not less than 122,000 nor more than 140,000, according to the last preceding federal census, shall receive an annual salary of not less than \$12,000 nor more than the salary paid by the State to any District Judge in that county. The salary, as determined by the Commissioners Court, shall be paid in equal monthly installments.

[Acts 1969, 61st Leg., p. 1800, ch. 604, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1823, ch. 542, § 29, eff. Sept. 1, 1971.]

**Art. 3883d. Sheriff, Tax Assessor-Collector, County Clerk, County Judge and Other Officers in Counties of 48,530 to 48,930**

Sec. 1. From and after January 1, 1940, being the effective date of this Act in all counties in this State having a population of not less than forty-eight thousand, five hundred and thirty (48,530) and not more than forty-eight thousand, nine hundred and thirty (48,930), according to the last preceding Federal Census, the Commissioners Court shall have the power and authority to fix the salaries of the sheriff, the tax assessor-collector, the county clerk, the county judge, the district clerk, and the county attorney; provided, however, that the salary of the sheriff shall not be fixed in excess of the sum of Four Thousand, Two Hundred and Fifty Dollars (\$4,250) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum; the salary of the tax assessor-collector shall not be

fixed in excess of the sum of Four Thousand Dollars (\$4,000) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars (\$3,600) per annum; the salary of the county clerk shall not be fixed in excess of the sum of Four Thousand Dollars (\$4,000) per annum, nor less than the sum of Three Thousand, Three Hundred Dollars (\$3,300) per annum; the salary of the county judge shall not be fixed in excess of the sum of Three Thousand, Two Hundred Dollars (\$3,200) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum; the salary of the district clerk shall not be fixed in excess of the sum of Three Thousand, Three Hundred Dollars (\$3,300) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum; the salary of the county attorney shall not be fixed in excess of the sum of Three Thousand Dollars (\$3,000) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars (\$2,700) per annum.

Sec. 2. All such salaries shall be paid in twelve (12) equal installments per year, and paid from funds now provided by law for payment of such officials.

[Acts 1939, 46th Leg., Spec.Laws, p. 739.]

**Art. 3883e. Tax Assessor-Collector in Counties of 70,000 to 80,000 and With \$40,000,000 Assessed Valuation**

Sec. 1. In all counties in the State with a population of more than seventy thousand (70,000) and not more than eighty thousand (80,000) according to the last preceding Federal Census, or any future Federal Census, and with an assessed valuation of not less than Forty Million Dollars (\$40,000,000), the Tax Assessor-Collector shall receive a salary of Fifty-five Hundred Dollars (\$5500), payable in equal monthly payments.

Sec. 2. It is hereby declared to be the intention of the Legislature that the provisions of this Act shall control in all things as to the counties affected hereby, and any and all laws in conflict herewith are hereby repealed to the extent and only to the extent of such conflict.

[Acts 1941, 47th Leg., p. 361, ch. 200.]

**Art. 3883f. Tax Assessor-Collector in Counties of 18,500 to 18,900 and With \$14,000,000 to \$15,500,000 Assessed Valuation**

In all counties of this State having a population of more than eighteen thousand, five hundred (18,500) and not more than eighteen thousand, nine hundred (18,900) inhabitants, according to the last preceding Federal Census, and having an assessed valuation on property for ad valorem tax purposes of more than Fourteen Million Dollars (\$14,000,000) and not over Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000), the Commissioners Court of such counties may fix the salary of the County Tax Assessor-Collector at any amount not to exceed the sum of Four Thousand, Eight

Hundred Dollars (\$4,800) per annum to be paid in twelve (12) equal monthly installments.

[Acts 1947, 50th Leg., p. 467, ch. 268, § 1.]

**Art. 3883f-1. Repealed by Acts 1967, 60th Leg., p. 841, ch. 352, § 2, eff. Aug. 28, 1967**

See, now, art. 3883f-2.

**Art. 3883f-2. Tax Assessor-Collector in Counties of Not Less Than 600,000 nor More Than 900,000 Population**

Sec. 1. The total compensation of any county assessor-collector of taxes of any county having a population of not less than 600,000 and not more than 900,000 according to the last preceding Federal Census shall not exceed \$18,000, inclusive of salary, fees, and other compensation received as assessor-collector of taxes.

Sec. 2. Chapter 248, Acts of the 57th Legislature, Regular Session, 1961, is repealed.

[Acts 1967, 60th Leg., p. 841, ch. 352, eff. Aug. 28, 1967.]

**Art. 3883g. County Judge, Sheriff, and Certain Other Officers in Counties of 145,000 to 250,000**

Sec. 1. The provisions of this Act shall apply to and control in each county in this State having a population of not less than one hundred and forty-five thousand (145,000) and not more than two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal census.

Sec. 2. The County Judge, Sheriff, District Attorney, or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of Taxes shall receive a salary of not less than Seven Thousand, Four Hundred Dollars (\$7,400) per annum from the Officers Salary Fund, in such counties.

Sec. 3. The Commissioners Court is hereby authorized, when in its judgment the financial condition of the county and the needs of the Deputies, Assistants and Clerks of any District, County or Precinct Officer justify the increase, to enter an order increasing the compensation of such Deputy, Assistant or Clerk in an additional amount not to exceed twenty per cent (20%) of the sum allowed under the law for the fiscal year of 1946.

Sec. 4. The Commissioners Courts of each county affected by this Act shall amend the budget to provide sufficient funds to pay additional compensation.

Sec. 5. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the Statute books except those in conflict herewith, and to the extent of the conflict only, but in other respects shall be construed as being cumulative law.

[Acts 1947, 50th Leg., p. 1064, ch. 455.]

**Art. 3883h. Maximum Compensation on Fee Basis of Certain Officers; Counties of Less Than 20,000**

Counties to Which Applicable; Authority of Commissioners Courts; Sheriffs Excepted

Sec. 1. In all counties in this State having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census and in which counties the Commissioners Courts have determined that the county officials shall be compensated on a fee basis, with the exception of the sheriffs whom Section 61, of Article XVI of the Constitution of Texas requires shall be compensated on a salary basis, the Commissioners Courts are authorized to fix the maximum compensation of the county and district officials compensated on a fee basis at any reasonable sum so long as the maximum compensation allowed any county official named in this Act shall not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum.

Ex-officio Services

Sec. 2. The Commissioners Courts are hereby debarred from allowing compensation for ex-officio services to the officials named in this Act who are compensated on a fee basis when the compensation, commissions and fees which they are allowed to retain shall reach the maximum sum provided for in Section 1 of this Act. In cases where the compensation, commissions and fees which the officers compensated on a fee basis are allowed to retain shall not reach the maximum provided for in this Act, the Commissioners Courts may allow ex-officio compensation when in their judgment such compensation is necessary, providing such compensation for ex-officio services allowed shall not increase the compensation of the officials beyond the maximum compensation allowed to be retained under Section 1 of this Act. However, county judges serving as members of the Juvenile Board, county judges acting as ex-officio county superintendents and county assessors and collectors of taxes serving as designated agents of the Motor Vehicle Division of the State Highway Department shall be entitled to retain the compensation provided by law for these services in addition to the maximum prescribed in Section 1 of this Act.

County Commissioners

Sec. 3. Since the County Commissioners do not collect any fees or commissions for the officials' services performed by them, the Commissioners Courts are hereby authorized to set their compensation at any reasonable sum so long as the maximum compensation allowed any County Commissioner does not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum. The compensation of the County Commissioners may be paid in accordance with the provisions of Section 2 of House Bill No. 84, Acts of the Forty-ninth

Legislature, Regular Session, 1945 (Article 2350(1), Vernon's Civil Statutes).

**Sheriffs' Salaries, Duty to Fix**

Sec. 4. In all counties in this State having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census where the Commissioners Courts have elected to pay all the county officials on a fee basis, with the exception of the sheriffs whom Section 61 of Article XVI of the Constitution of Texas requires to be paid on a salary basis, the Commissioners Courts shall fix the salaries of sheriffs in such counties at any reasonable sum so long as the maximum salary paid any sheriff does not exceed the sum of Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum. The salary of each sheriff shall be paid out of the General Fund of such county.

**Application of Article to Certain Officers**

Sec. 5. The provisions of this Act shall be applicable to District Clerks, County Clerks, County Judges, Judges of the County Courts at Law, Judges of the County Criminal Courts, Judges of the County Probate Courts, Judges of the County Domestic Relations Courts, County Treasurers, Criminal District Attorneys, Inspectors of Hides and Animals, Sheriffs, Assessor-Collectors of Taxes, County Attorneys, County Commissioners, Sheriffs who also perform the duties of Assessor-Collectors of Taxes, County Clerks who also perform the duties of District Clerks, and County Commissioners who act as Road Commissioners.

**Repealer**

Sec. 6. Articles 3883 and 3891, Revised Civil Statutes of Texas, 1925, as amended, are hereby expressly repealed in so far as their provisions are applicable to the officers named in this Act, and all other laws pertaining to the compensation of the county officials governed by the provisions of this Act are hereby expressly repealed with the exception of those laws which provide for extra compensation of county judges who serve as members of the Juvenile Boards, county judges who also serve as ex-officio county superintendents and for assessors and collectors of taxes who also serve as designated agents for the Motor Vehicle Division of the State Highway Department. The provisions of this Act shall not be construed as repealing any valid Road and Bridge Law of any county in this State.

**Financial Condition of County to be Considered**

Sec. 7. In arriving at the compensation to be paid the officials governed by the provisions of this Act, the Commissioners Courts shall consider the financial condition of their respective counties and the duties and needs of their officials, but in no event shall any Commissioners Court set the compensation of any official at any figure in excess of the maximum compensation prescribed for the officials of that county by this Act.

**Commissioners Courts, Fixing Salaries Of; Restrictions**

Sec. 8. In setting the compensation of the officials named in the provisions of this Act, the Commissioners Courts shall not set their own salaries at a figure higher than the compensation of the highest paid official within their respective counties.

[Acts 1955, 54th Leg., p. 1134, ch. 426.]

**Art. 3883i. Maximum and Minimum Salaries; Certain Precinct, County and District Officials in Certain Counties**

**Counties of Less Than 20,000**

Sec. 1. That in each county in the State of Texas having the population of less than twenty thousand (20,000) inhabitants according to the last preceding federal census where all county and district officials are compensated on a salary basis, the Commissioners Courts shall fix the salaries of the officials named in this Act at not more than Six Thousand, Seven Hundred and Fifty Dollars (\$6,750) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 12,150 to 12,300**

(a) In each county of the State of Texas having a population of not less than twelve thousand one hundred fifty (12,150) nor more than twelve thousand three hundred (12,300) according to the last preceding federal census where all county and district officials are compensated on a salary basis, the Commissioners Court shall fix the salaries of the officials named in this Act at a sum of not more than Ten Thousand Dollars (\$10,000) per annum; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act.

**Counties of 17,775 to 17,850**

Sec. 1½. Provided, however, that in addition to the maximum compensation provided in Section 1, that in all counties having a population of not less than seventeen thousand seven hundred seventy-five (17,775) and not more than seventeen thousand eight hundred fifty (17,850) according to the last preceding federal census, and where all such county officials are compensated on a salary basis, the Commissioners Courts are authorized to increase the compensation allowed in Section 1 above in an additional amount not to exceed Two Thousand, Six Hundred Dollars (\$2,600) per annum, provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Counties of 12,500 to 13,000**

Sec. 1A. The Commissioners Court of a county having a population of more than 12,500 but less than 13,000, according to the last preceding federal census, and paying all county officials on a salary basis, may increase the compensation prescribed by Section 1 of this Act for the County Judge, county attorney,



county clerk, county treasurer, county auditor, county assessor-collector of taxes, county commissioners, sheriff, and district clerk in an amount not exceeding \$2,600 a year.

Counties of 13,500 to 13,800

Sec. 1B. In any county which has a population of not less than 13,500 nor more than 13,800, according to the last preceding federal census, and which pays all its county officials on a salary basis, the Commissioners Court may increase the compensation prescribed by Section 1 of this Act for County Judge, county attorney, county clerk, county treasurer, county auditor, county assessor and collector of taxes, county commissioners, sheriff, and district clerk in an amount of not more than \$2,600 a year.

Counties of 4,000 to 4,200

Sec. 1C. In any county having a population of not less than 4,000 nor more than 4,200 according to the last preceding federal census, and paying county officials on a salary basis, the Commissioners Court may set the compensation of persons listed in this Act in an amount not to exceed \$9,600 a year; however, no salary may be set at a figure lower than that actually paid on the effective date of this amendment. The provisions of Section 18 of this Act do not apply to salaries set under this section.

*Two other sections 1C were added by Acts 1971, 62nd Leg., p. 2395, ch. 749, § 1 and Acts 1971, 62nd Leg., p. 2619, ch. 359, § 1. See the other two sections 1C, post.*

Counties of 8,900 to 9,050

Sec. 1C. In any county having a population of not less than 8,900 nor more than 9,050 according to the last preceding Federal Census, the Commissioners Court may fix the salaries of county and district officials named in this Act in an amount not to exceed \$12,500 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

*Two other sections 1C were added by Acts 1971, 62nd Leg., p. 1817, ch. 542, § 141 and Acts 1971, 62nd Leg., p. 2619, ch. 859, § 1. See section 1C, ante and section 1C, post.*

Counties of 12,150 to 12,300

Sec. 1C. In each county of the State of Texas having a population of not less than 12,150 nor more than 12,300, according to the last preceding Federal Census; the Commissioners Court shall fix the salaries of the officials named in this Act at a sum of not more than Fifteen Thousand Dollars (\$15,000) per annum; and the salaries of the justices of the peace shall be fixed at a sum of not more than Ten Thousand Dollars (\$10,000) per annum, all salaries to be paid in twelve (12) equal monthly installments; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this section. Section 18 of this Act does not apply to salaries set under this section.

*Two other sections 1C were added by Acts 1971, 62nd Leg., p. 1817, ch. 542, § 141 and Acts 1971, 62nd Leg., p. 2395, ch. 749, § 1. See the other two sections 1C, ante.*

Counties of 15,450 to 15,700

Sec. 1D. In any county having a population of not less than 15,450 nor more than 15,700 according to the last preceding Federal Census, the commissioners court may fix the salaries of officials named in Sections 6 and 7a of this Act at not more than \$12,000 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

Counties of 20,000 to 46,000

Sec. 2. In each county in the State of Texas having a population of at least twenty thousand (20,000) and not more than forty-six thousand (46,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Eight Thousand, Five Hundred Dollars (\$8,500) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Counties of 4,300 to 4,400

Sec. 2A. In any county having a population of not less than 4,300 nor more than 4,400 inhabitants according to the last preceding federal census, the commissioners court may fix the salaries of county and district officials named in this Act in an amount not to exceed \$12,000 a year; provided, that no salary shall be set at a figure lower than that actually paid on the effective date of this amendment.

Counties of 48,000 to 49,400

Sec. 2B. In any county which has a population of not less than forty-eight thousand (48,000) nor more than forty-nine thousand four hundred (49,400), according to the last preceding federal census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Twelve Thousand Dollars (\$12,000) per annum.

Sec. 2C. [Blank].

Sec. 2D. [Blank].

Counties of 18,680 to 18,800

Sec. 2E. In any county having a population of not less than 18,680 nor more than 18,800 according to the last preceding federal census, the commissioners court may fix the salaries of officials named in Sections 6 and 7a of this Act at not more than \$12,000 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

Counties of 36,500 to 37,000

Sec. 2F. In any county having a population of not less than 36,500 nor more than 37,000, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the county and district officials named in

this Act at not more than Fifteen Thousand Dollars (\$15,000) per annum. Section 18 of this Act does not apply to salaries set under this section.

Counties of 27,850 to 28,000

Sec. 2G. In any county having a population of not less than 27,850 nor more than 28,000, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Fifteen Thousand Dollars (\$15,000) per annum. Section 18 of this Act does not apply to salaries set under this section.

Counties of 3,850 to 3,890

Sec. 2H. In any county having a population of not less than 3,850 nor more than 3,890, according to the last preceding Federal Census, and having a valuation of not less than \$45,000,000 according to the last preceding tax roll, the Commissioners Court may fix the salaries of county and district officials named in this Act in an amount not to exceed \$12,000 per year.

Counties of 46,001 to 98,000

Sec. 3. In each county in the State of Texas having a population of at least forty-six thousand and one (46,001) and not more than ninety-eight thousand (98,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Ten Thousand Dollars (\$10,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Counties of 75,700 to 80,000

Sec. 3A. In each county in the state having a population of at least seventy-five thousand seven hundred (75,700) and not more than eighty thousand (80,000) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the officials named in this Act at not more than Sixteen Thousand Dollars (\$16,000) per annum. Notwithstanding the provisions of Sections 15 and 18 of this Act, the Commissioners Court of such a county may not exercise the authority vested in it by virtue of this Act except at a regular meeting of the Court and after thirty (30) days notice published in a newspaper of general circulation in the county at least four times, one time a week.

Counties of 74,700 to 75,699

Sec. 3B. In each county in the state having a population of at least seventy-four thousand, seven hundred (74,700) and not more than seventy-five thousand, six hundred and ninety-nine (75,699) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the officials named in this Act at not more than Sixteen Thousand Dollars (\$16,000) per annum. Not-

withstanding the provisions of Sections 15 and 18 of this Act, the Commissioners Court of such a county may not exercise the authority vested in it by virtue of this Act except at a regular meeting of the Court and after thirty (30) days notice published in a newspaper of general circulation in the county at least four times, one time a week.

Counties of 98,001 to 195,000

Sec. 4. In each county in the State of Texas having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred and ninety-five thousand (195,000) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Eleven Thousand Dollars (\$11,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Counties of 145,000 to 200,000

(a) In each county of the State of Texas governed by Section 4 hereof and having a population of at least one hundred forty-five thousand (145,000) and less than two hundred thousand (200,000) according to the last preceding federal census where all county and district officials are compensated on a salary basis, the Commissioners Court shall fix the salaries of the officials named in this Act at a sum of not more than Seventeen Thousand, Five Hundred Dollars (\$17,500) per annum; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing this Subsection shall be cumulative of all other laws pertaining to the compensation of county officials.

Counties of 150,000 to 170,000

(b) In each county of the State of Texas governed by Section 4 and Subsection 4(a) hereof and having a population of at least one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000) according to the last preceding federal census where the County Judge is compensated on a salary basis, the Commissioners Court may fix the yearly salary of the County Judge at a sum not more than the total salary, including supplements, paid any District Judge sitting in Galveston County; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing that this subsection shall be cumulative of all other laws pertaining to the compensation of County Judges.

Counties of 195,001 to 600,000

Sec. 5. In each county in the State of Texas having a population of at least one hundred ninety-five thousand and one (195,001) inhabitants and less than six hundred thousand (600,000) inhabitants according to the last preceding Federal Census, the Commissioners

Courts shall fix the salaries of the county and district officials named in this Act at not more than Eighteen Thousand, Five Hundred Dollars (\$18,500) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

**Officials to Which Statute Applies**

Sec. 6. The provisions of Sections 1, 2, 3, 4 and 5 of this Act shall be applicable to district clerks, county clerks, county judges, judges of the county courts at law, judges of the county criminal courts, judges of the county probate courts, judges of the county domestic relations court, county treasurers, criminal district attorneys, inspectors of hides and animals, sheriffs, assessors and collectors of taxes, county attorneys, county commissioners, sheriffs who also perform the duties of assessor-collector of taxes, county clerks who also perform the duties of district clerks, and county commissioners who act as road commissioners.

**County Commissioners; Restrictions on Fixing Maximum of Salaries For**

Sec. 7. In setting the compensation of the officials governed by Sections 1, 2, 3, 4, 5 and 6 of this Act, the County Commissioners shall not fix their own salaries at any higher rate by percentage than the highest percentage raise fixed for any other official or officials prescribed for the officials of their respective counties by this Act.

**Veterans County Service Officers; Salaries**

Sec. 7a. The salaries of Veterans County Service Officers shall be fixed by the Commissioners Court of each county in the following manner:

(a) In each county in the State of Texas having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, not more than Five Thousand, Seven Hundred and Fifty Dollars (\$5,750) per annum;

(b) In each county in the State of Texas having a population of at least twenty thousand (20,000) and not more than forty-six thousand (46,000) inhabitants according to the last preceding Federal Census, not more than Seven Thousand Dollars (\$7,000) per annum;

(c) In each county in the State of Texas having a population of at least forty-six thousand and one (46,001) and not more than ninety-eight thousand (98,000) inhabitants according to the last preceding Federal Census, not more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum;

(d) In each county in the State of Texas having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred and ninety-five thousand (195,000) inhabitants according to the last preceding Federal Census, not more than Eight Thousand Dollars (\$8,000) per annum;

(e) In each county in the State of Texas having a population of at least one hundred ninety-five thousand and one (195,001) inhabitants and less than six hundred thousand (600,000) inhabitants according to the last preceding Federal Census, not more than Eight Thousand, Five Hundred Dollars (\$8,500) per annum;

(f) In each county in the State of Texas having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, not more than Nine Thousand Dollars (\$9,000) per annum.

**Counties of 1,200,000 to 1,500,000**

Sec. 8(a). In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants and not more than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of county officials as follows:

The salary of the county judge shall be Twenty-eight Thousand Eight Hundred Dollars (\$28,800) per annum; the county commissioners, Twenty-seven Thousand Six Hundred Dollars (\$27,600); criminal district attorney and district attorney, Thirty Thousand Dollars (\$30,000); probate judge, Twenty-seven Thousand, Six Hundred Dollars (\$27,600); sheriff, Twenty-seven Thousand, Six Hundred Dollars (\$27,600); tax assessor and collector, Twenty-seven Thousand, Six Hundred Dollars (\$27,600); judges of county courts at law and county criminal courts, Twenty-seven Thousand, Six Hundred Dollars (\$27,600); county clerk and district clerk, Twenty-four Thousand Dollars (\$24,000); county treasurer, Twenty-three Thousand, Four Hundred Dollars (\$23,400). Salaries fixed by this section shall be payable in equal monthly installments; provided, however, that the total salary received by the tax assessor and collector, including all additional fees and compensation, shall not exceed Thirty Thousand Dollars (\$30,000) per annum in the aggregate; justices of the peace and the constables shall receive not to exceed Nineteen Thousand, Two Hundred Dollars (\$19,200) per annum to be paid in equal monthly installments; provided that the justices of the peace and constables whose precincts lie wholly or in part in cities having a population of six hundred thousand (600,000) or more, according to the last preceding Federal Census, shall receive not less than Twenty-one Thousand, Six Hundred Dollars (\$21,600) per annum. The county judge in such counties, shall be allowed, in addition to all other compensation fixed herein, the sum of Three Thousand Dollars (\$3,000) per annum for serving as a member of the County Juvenile Board which shall be paid in twelve (12) equal monthly installments out of the general fund of such county and which additional compensation shall be in addition to all other salary or other compensation now paid to such county judge.

The Commissioners Court of each county to which this Subsection (a) applies may increase the salary or maximum salary of each officer enumerated in this subsection in an additional amount not to exceed 20 percent of the salary or maximum salary, exclusive of supplemental compensation, authorized in this subsection. No increased compensation may be authorized pursuant to this paragraph of this Subsection (a), until, at a regular meeting, the Commissioners Court holds a public hearing upon the question of any proposed increase, following publication of notice of that public hearing, in a newspaper of general circulation in that county, at least two (2) times, one time a week prior to such public hearing.

**Counties of 1,700,000 or More**

(b) In all counties of this state having a population of one million, seven hundred thousand (1,700,000) or more inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties shall fix the salaries of county officials in the following manner:

The salary of the county commissioners shall be not more than Nineteen Thousand, Eight Hundred Dollars (\$19,800.00); sheriff, not more than Twenty-seven Thousand, Six Hundred Dollars (\$27,600); county clerk and district clerk, not more than Twenty-four Thousand, Six Hundred Dollars (\$24,600); county treasurer, not more than Nineteen Thousand, Five Hundred Dollars (\$19,500); tax assessor and collector, not more than Thirty Thousand Dollars (\$30,000); each of such salaries shall be payable in equal monthly installments; provided, however, that the total salary received by the tax assessor and collector, including all additional fees and compensation, shall not exceed Thirty Thousand Dollars (\$30,000) per annum in the aggregate; justices of the peace and the constables at not more than Sixteen Thousand Dollars (\$16,000) per annum, to be paid in equal monthly installments; provided, however, that the justices of the peace and constables whose precincts lie wholly or in part in cities having a population of six hundred thousand (600,000) or more, according to the last preceding Federal Census, shall receive not more than Twenty-one Thousand, Six Hundred Dollars (\$21,600) per annum. The provisions of Section 18 of this Act do not apply to salaries set under this subsection.

**Counties of 750,000 to 1,000,000**

(c) In all counties of this state having a population of not less than 750,000 nor more than 1,000,000 according to the last preceding Federal Census, the Commissioners Court shall fix the annual salaries of county officials in amounts not to exceed the following:

(1) The salary of the county judge, \$22,500; the county commissioners, \$22,000; district attorney, \$26,000; sheriff, \$22,000; tax assessor and collector, \$25,000; judges of the county courts at law

and county civil court at law, \$25,000; county clerk and district clerk, \$22,000; county treasurer, \$18,000. Salaries fixed by this Section shall be payable in equal monthly installments; justices of the peace and the constables may receive not to exceed \$16,000 per annum to be paid in equal monthly installments;

(2) The county judge in those counties, shall be allowed, in addition to all other compensation in this subsection, a sum, to be set by the commissioners court, not to exceed \$4,500 per annum for serving as a member of the County Juvenile Board which shall be paid in 12 equal monthly installments out of the general fund of the county and which additional compensation shall be in addition to all other salary or other compensation now paid to the county judge.

**Bexar County Criminal District Attorney**

(d) The Criminal District Attorney of Bexar County may be paid a salary in an amount not to exceed the total salary paid from state and county funds to any one of the judges of the district courts of Bexar County directed by the legislature to give preference to criminal cases, including any compensation paid to any one of the district judges of a criminal district court in Bexar County with reference to juvenile board matters. Provided however, in no event may the salary of the Criminal District Attorney of Bexar County be less than \$25,800 per year.

When this bill becomes effective, such District Attorney shall be prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

**Counties of 750,000 to 1,000,000**

Sec. 8a. In all counties having a population of more than 750,000 inhabitants and less than 1,000,000, according to the last preceding federal census, the Commissioners Court may fix the salaries of the sheriff, county commissioners, district clerk and county clerk at not more than \$15,000 per annum, payable in equal monthly installments.

**Counties of 600,000 or More; Justices of Peace and Constables**

Sec. 9. In all counties of this State having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the Justices of the Peace and the Constables at not to exceed Ten Thousand Dollars (\$10,000) per annum, to be paid in equal monthly installments; provided, however, that the Justices of the Peace and Constables whose precincts lie wholly or in part in cities having a population of four hundred and thirty thousand (430,000) or more, according to the last preceding Federal Census, shall receive not less than Eight Thousand, Two Hundred Dollars (\$8,200) per annum.

Counties of 600,000 or More; Judges of District Courts

Sec. 10. In all counties of this State having a population of six hundred thousand (600,000) or more inhabitants according to the last preceding Federal Census, the Commissioners Courts of such counties shall pay to the Judges of the several District Courts in such counties a supplemental annual salary out of county funds in equal monthly installments for all judicial and administrative services performed by them; provided, however, that the aggregate annual salary of District Judges in such counties from both State and county funds shall not exceed the salary provided by law for the Justices of the Courts of Civil Appeals in this State. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Article 200-A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount to be set by the Commissioners Court not to exceed the difference between the pay of such visiting Judge from all sources and that pay received from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding Judge in which said Court is located.

Repeal of Certain Laws

Sec. 11. All other salary and compensation laws applicable to the compensation of the officials named in this Act are hereby repealed with the exception of those laws which provide for extra compensation for county judges who serve as members of the juvenile boards and for county judges who also serve as ex-officio county superintendents, and providing further that this Act shall not repeal any statute which allows the assessors and collectors of taxes additional or supplemental salaries for services performed in the administration of the Certificate of Title Act. Further, the provisions of this Act are not to be construed as repealing any valid road and bridge law of any county in this State.

Source of Salary Payments

Sec. 12. The salaries of the officials named in this Act shall be paid out of the Officers' Salary Fund and/or General Fund of their respective counties with the exception that the salaries of county commissioners and county judges may be paid in accordance with the provisions of Section 2 of House Bill No. 84, Acts of the Forty-ninth Legislature, Regular Session, 1945 (Article 2350(1) of Vernon's Civil Statutes).

Financial Condition of County to be Considered

Sec. 13. In arriving at the compensation to be paid the officials governed by the provisions of this Act the Commissioners Courts shall consider the financial condition of their respective counties and the duties and needs of their officials, but in no event shall any Com-

missioners Court set the salary of any official at a figure in excess of the maximum compensation prescribed for the officials of that county by this Act.

Fees and Commissions Earned; Payment into County Treasury

Sec. 14. All of the fees and commissions earned and collected by the officials named in this Act shall be paid into the County Treasury in accordance with the provisions of Section 61 of Article XVI of the Constitution of Texas.

Exercise of Authority by Commissioners Courts; Meetings; Notice

Sec. 15. The Commissioners Court shall not exercise the authority vested in said Court by virtue of this Act, except at regular meeting of said Court and after ten (10) days notice published in a paper of general circulation in the county to be affected thereby of the intended salaries to be raised and the amount of such proposed raise.

Sec. 16. [Severability clause].

Sec. 17. [Emergency clause].

Increase in Maximum Compensation

Sec. 18. The Commissioners Court in each county in the State is hereby authorized to increase the maximum compensation of each officer enumerated in House Bill No. 374, as amended, in an additional amount not to exceed twenty per cent (20%) of the maximum sum authorized by House Bill No. 374, as amended; provided that the compensation of no official governed by the provisions of House Bill No. 374,<sup>1</sup> as amended, shall be set at a figure lower than that actually paid on the effective date of this Act; and provided, further, that no increased compensation shall be authorized pursuant to this Act until and unless a public hearing shall be had by the Commissioners Court, at a regular meeting of such Court, upon the question of any proposed increase, following publication of notice of such public hearing at least two (2) times, one time a week, in a newspaper of general circulation in such county, prior to such public hearing.

[Acts 1955, 54th Leg., p. 1137, c. 427; Acts 1957, 55th Leg., p. 1309, ch. 440, § 1; Acts 1959, 56th Leg., 1st C.S., p. 17, ch. 4, § 1; Acts 1959, 56th Leg., p. 861, ch. 387, § 1; Acts 1959, 56th Leg., 2nd C.S., p. 167, ch. 43, § 1; Acts 1961, 57th Leg., p. 900, ch. 398, § 1; Acts 1961, 57th Leg., p. 1177, ch. 532, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 71, ch. 26, § 4; Acts 1965, 59th Leg., p. 578, ch. 293, § 1; Acts 1965, 59th Leg., pp. 999, 1000, ch. 487, § 1, eff. June 16, 1965; Acts 1965, 59th Leg., p. 1644, ch. 708, § 1; Acts 1965, 59th Leg., p. 1569, ch. 680, § 1; Acts 1965, 59th Leg., p. 1627, ch. 697, § 1; Acts 1967, 60th Leg., p. 906, ch. 397, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 497, ch. 163, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1799, ch. 602, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1804, ch. 608, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2134, ch. 738, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2457, ch. 824, § 1, eff. June 16, 1969; Acts 1969, 61st Leg., p. 2460, ch. 825, § 1, eff. June 16, 1969; Acts 1971, 62nd Leg., p. 813, ch. 85, § 1, eff. April 28, 1971; Acts 1971, 62nd Leg., p. 831, ch. 95, § 1, eff. April 28, 1971; Acts 1971, 62nd Leg., p. 926, ch. 140, § 1, eff. May 10, 1971; Acts 1971, 62nd Leg., p. 990, ch. 177, § 1, eff. May 13, 1971; Acts 1971, 62nd Leg., p. 1163, ch. 268, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1238, ch. 303, § 1, eff. May

24, 1971; Acts 1971, 62nd Leg., p. 1610, ch. 443, § 1, eff. May, 26, 1971; Acts 1971, 62nd Leg., p. 1852, ch. 542, § 139 to 141, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 1901, ch. 567, § 1, eff. Aug. 30, 1971; 62nd Leg., p. 1901, ch. 567, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1933, ch. 585, § 1, eff. June 1, 1971; Acts 1971, 62nd Leg., p. 1945, ch. 588, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2395, ch. 749, § 1, eff. June 8, 1971; Acts 1971, 62nd Leg., p. 2619, ch. 859, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3065, ch. 1020, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3364, ch. 1026, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1292, ch. 482, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1345, ch. 510, § 1, eff. June 14, 1973.]

<sup>1</sup> Acts 1955, 54th Leg., p. 1137, ch. 427, classified as this article.

### Repealer

*Acts 1971, 62nd Leg., p. 2019, ch. 622, providing for the setting of compensation, expenses and allowances for certain county and precinct officials and employees by the commissioners courts effective January 1, 1972, provides in section 8 thereof that to the extent any local, special, or general law, including Acts of the 1971 Legislature, prescribes such compensation, expenses and allowances for any official or employee covered by this Act, that law is repealed. See article 3912k.*

1970 Census. The following 1971 acts, amending various sections of this article, each provided:

"As used in this Act, "the last preceding Federal Census" means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

Acts 1971, 62nd Leg., p. 831, ch. 95, § 2.  
 Acts 1971, 62nd Leg., p. 990, ch. 177, § 2.  
 Acts 1971, 62nd Leg., p. 1238, ch. 303, § 2.  
 Acts 1971, 62nd Leg., p. 1610, ch. 443, § 2.  
 Acts 1971, 62nd Leg., p. 1901, ch. 567, § 2.  
 Acts 1971, 62nd Leg., p. 1945, ch. 588, § 3.  
 Acts 1971, 62nd Leg., p. 2395, ch. 749, § 2.  
 Acts 1971, 62nd Leg., p. 2620, ch. 859, § 2.  
 Acts 1971, 62nd Leg., p. 3066, ch. 1020, § 2.  
 Acts 1971, 62nd Leg., p. 3364, ch. 1026, § 2.

### Art. 3883i-1. Compensation of Officers of Counties of 375,000 to 650,000

In all counties having a population of not less than three hundred and seventy-five thousand (375,000) nor more than six hundred and fifty thousand (650,000) according to the last preceding Federal Census, the commissioners court shall fix the salaries of the county officers as follows: The salary of the county judge shall be not less than Nineteen Thousand, Eight Hundred Dollars (\$19,800) per annum; the county commissioners, not less than Nineteen Thousand, One Hundred and Twenty Dollars (\$19,120) per annum; the district attorney, not less than Twenty-two Thousand, Nine Hundred Dollars (\$22,900) per annum; the sheriff, not less than Nineteen Thousand, Seven Hundred and Fifty Dollars (\$19,750) per annum; the tax assessor and collector, not less than Twenty-one Thousand and Ten Dollars (\$21,010) per annum; the probate judge and judges of county courts at law and county criminal courts, not less than Twenty Thousand, Eight Hundred Dollars (\$20,800) per annum; the county clerk and the district clerk, not less than Nineteen Thousand, Seven Hundred and Fifty Dollars (\$19,750) per annum;

and the county treasurer, not less than Sixteen Thousand, Six Hundred Dollars (\$16,600) per annum. Salaries fixed by this Section shall be payable in equal monthly installments. Justices of the peace and constables of Precincts One and Two of such county shall receive not less than Fourteen Thousand, Five Hundred Dollars (\$14,500) per annum, to be paid in equal monthly installments. The county judge in such counties shall be allowed, in addition to all other compensation fixed in this Section, the sum of Two Thousand, Five Hundred Dollars (\$2,500) per annum for serving as a member of the County Juvenile Board. This additional compensation shall be paid in twelve (12) equal monthly installments out of the general fund of such county and shall be in addition to all other salary or other compensation now paid to such county judge.

[Acts 1965, 59th Leg., p. 1627, ch. 697, § 2; Acts 1969, 61st Leg., p. 2457, ch. 824, § 2, eff. June 16, 1969.]

### Art. 3883i-2. Compensation of Judges; Counties of Not Less Than 1,500,000

Sec. 1. In all counties of this State having a population of not less than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of each of the Judges of the Probate Courts, Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law at not less than One Thousand Dollars (\$1,000) less per annum than the total annual salary received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

Sec. 2. In all counties of this State having a population of not less than one million, five hundred thousand (1,500,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of the County Judge at not less than One Thousand Dollars (\$1,000) more per annum than the total annual salary received by Judges of the Probate Courts, Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law in such counties, which shall be paid in twelve (12) equal monthly installments. [Acts 1971, 62nd Leg., p. 2803, ch. 906, eff. Aug. 30, 1971.]

Art. 3884. Repealed by Acts 1929, 41st Leg., 1st C.S., p. 225, ch. 92, § 1; Acts 1931, 42nd Leg., p. 364, ch. 214, § 1

Art. 3885. District Attorneys of Districts of Two or More Counties

See Code of Criminal Procedure, Art. 1021.

Art. 3886. District and County Attorneys of Large Counties

In any county having a population in excess of one hundred fifty thousand (150,000) and less than three hundred fifty thousand (355,000) inhabitants, the District Attorney, or Criminal District Attorney may appoint not exceeding eight Assistant District Attorneys, two

of whom shall receive a salary not to exceed Four Thousand Two Hundred Fifty (\$4,250.00) Dollars per annum each; two of whom shall receive a salary not to exceed Thirty-six Hundred (\$3,600.00) Dollars per annum each; four of whom shall receive a salary not to exceed Three Thousand (\$3,000.00) Dollars per annum each. He may appoint two stenographers, one of whom shall receive a salary not to exceed Eighteen Hundred (\$1,800.00) Dollars per annum, and one of whom shall receive a salary not to exceed Fifteen Hundred (\$1,500.00) Dollars per annum. He may appoint two investigators, who shall receive a salary not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum. He may appoint one court reporter who shall receive a salary not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum. In addition to the above, each County Attorney in said counties shall be authorized to appoint not exceeding seven Assistant County Attorneys, two of whom shall receive a salary not to exceed Thirty-six Hundred (\$3,600.00) Dollars per annum each; two of whom shall receive a salary not to exceed Three Thousand (\$3,000.00) Dollars per annum each; three of whom shall receive a salary not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum each. He may appoint one investigator, who shall receive a salary, not to exceed Eighteen Hundred (\$1,800.00) Dollars per annum. He may appoint one stenographer, who shall receive a salary, not to exceed Sixteen Hundred and Twenty (\$1,620.00) Dollars per annum. He may appoint one abstractor, who shall receive a salary, not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum. The salaries of all such assistants, stenographers and investigators hereinbefore provided for in this Article shall be paid monthly by said counties by warrant drawn upon the general funds thereof. Should such District Attorney or Criminal District Attorney or County Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime in the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint not to exceed seven such additional assistants and employees and fix their salaries, provided such salaries shall not, in any event, exceed Three Thousand (\$3,000.00) Dollars per annum each, but such additional assistants or employees so appointed before qualifying and entering upon the duties of such office and employment shall be approved as to number and salary by the Commissioners' Court of the county in which such appointments were made. The salaries of such additional assistants and employees shall be paid monthly out of the excess fees collected by such District Attorney, or Criminal District Attorney, or County Attorney which would otherwise go to said county. In no event shall said county be liable for the salaries of such additional assistants or employees; provided, however, in any county having a pop-

ulation in excess of three hundred fifty-five thousand (355,000) inhabitants the Criminal District Attorney shall be authorized to appoint eleven Assistant District Attorneys; two of whom shall receive a salary not to exceed Four Thousand Two Hundred Fifty (\$4,250.00) Dollars per annum each; two of whom shall receive a salary not to exceed Thirty-six Hundred (\$3,600.00) Dollars per annum each; the balance of whom shall receive a salary not to exceed Three Thousand (\$3,000.00) Dollars per annum each. He may employ two court reporters at a salary not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum each. He may employ three stenographers, each of whom shall receive a salary not to exceed Sixteen Hundred and Twenty (\$1,620.00) Dollars per annum. He may employ three investigators who shall receive a salary not to exceed Eighteen Hundred (\$1,800.00) Dollars per annum each. He may employ one information clerk who shall receive a salary not to exceed Nine Hundred (\$900.00) Dollars per annum. The salaries of such assistants, stenographers, investigators and clerk above provided for shall be paid monthly by said counties by warrant drawn upon the general funds thereof. Should such District Attorney or Criminal District Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint not to exceed nine additional assistants and employees and fix their salaries, provided such salaries shall in no event exceed Three Thousand (\$3,000.00) Dollars per annum each, but such additional assistants or employees so appointed before qualifying and entering upon the duties of such office and employment shall be approved as to number and salary by the Commissioners' Court of the county in which such appointments are made. The salaries for such additional assistants and employees shall be paid monthly out of the excess fees collected by such District Attorney and his office which would otherwise go to said county. Each of the officers named herein shall be subject to the provisions of Articles 3883 and 3891 in so far as the retention of the maximum and excess fees is concerned, and each shall file the sworn report required by Article 3897 giving a detailed and itemized statement of all fees collected and the purposes for which the same were used, provided that nothing in this Act shall be construed as repealing or affecting House Bill No. 875, passed by the Regular Session of the Forty-third Legislature.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1933, 43rd Leg., p. 734, ch. 220, § 5.]

**Art. 3886a. Assistants and Other Appointments by District and County Attorneys in Counties of 125,001 to 150,000**

In all counties in this State having a population of one hundred and twenty-five thousand and one (125,001) inhabitants

and not more than one hundred and fifty thousand (150,000) inhabitants, according to the last preceding Federal Census, and being in a Judicial District composed of two or more counties, the District Attorney of any such Judicial District in this State, if and when in his judgment the efficient conduct of his office so requires may, with the consent and approval of the Commissioners' Court, and in addition to such of his Assistants as are or may be paid by the State, appoint not to exceed two (2) Assistant District Attorneys, each of whom shall receive a salary of not more than Three Thousand Two Hundred Dollars (\$3,200.00) per annum. Such District Attorney may also, with the consent and approval of the Commissioners' Court, appoint one stenographer who shall receive a salary of not more than Two Thousand Four Hundred Dollars (\$2,400.00) per annum. Such District Attorney may also, with the consent and approval of the Commissioners' Court, appoint two (2) investigators, each of whom shall receive a salary of not more than Two Thousand Four Hundred Dollars (\$2,400.00) per annum. The salaries of such Assistant District Attorneys, stenographers, and investigators shall be fixed by the said Commissioners' Court and shall be payable out of the General Fund of such county, upon the certificate of the District Attorney aforesaid. The Commissioners' Court of such county is hereby authorized to set aside each year a sum not to exceed One Thousand Five Hundred Dollars (\$1,500.00), to be expended by such District Attorney in preparation and conduct of the criminal affairs of his office. This sum is to be expended upon sworn claim of such District Attorney, to be approved by the County Judge of such County and shall be payable out of the General Fund of such County.

In addition to the above the County Attorney in each of such Counties, when and if in his judgment the efficient conduct of his office so requires may with the consent and approval of the Commissioners' Court appoint two Assistant County Attorneys, each of whom shall have the qualifications of County Attorneys, and each of whom shall receive a salary of not more than Three Thousand Dollars (\$3,000.00) per annum; such salary to be fixed and determined by the Commissioners' Court of such Counties. The County Attorney in such Counties may also appoint, with the consent and approval of the Commissioners' Court, one Assistant County Attorney, who need not possess the qualifications of County Attorneys, who shall act as stenographer and/or investigator and perform such other duties as may be assigned to him by such County Attorney; such Assistant County Attorney shall receive a salary of not to exceed Eighteen Hundred Dollars (\$1,800.00) per annum. Such salaries hereinabove set out shall be paid monthly by the Commissioners' Court, out of the General Fund of such Counties, upon the certificate of the County Attorney.

The County Attorney in such Counties may also appoint, with the consent and approval of

the Commissioners' Court, an Assistant County Attorney to assist in the filing and prosecuting of tax suits. Such Assistant County Attorney shall receive such salary as the Commissioners' Court may determine, not to exceed Twenty-four Hundred Dollars (\$2,400.00) per annum, said salary to be paid monthly out of a percentage of all delinquent taxes collected.

Should such District and/or County Attorney aforesaid be of the opinion that the number of Assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime, and the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint additional Assistants, deputies or clerks, under the provisions and limitations of Article 3902, Revised Civil Statutes of Texas of 1925, as amended by the Forty-third Legislature, Regular Session, 1933, Chapter 220.

[Acts 1933, 43rd Leg., 1st C.S., p. 300, ch. 110, § 1.]

**Art. 3886b. Appointment and Salaries of Assistant County Attorneys in Counties of Over 125,000 Having No District or Criminal District Attorney**

In all Counties in this State having a population of over 125,000 inhabitants according to the latest preceding Federal Census and in which there is no District Attorney or Criminal District Attorney and the County Attorney performs the duties of County and District Attorney, the County Attorney in such Counties, upon sworn application showing the necessity therefor and upon approval by the Commissioners' Court of such application, shall be authorized to appoint one first assistant County Attorney who shall receive a salary of not to exceed Three Thousand Six Hundred (\$3,600.00) Dollars per annum, and such other assistants and employees as are necessary who shall receive salaries of not to exceed Three Thousand (\$3,000.00) Dollars per annum. The Commissioners' Court in each order approving the appointment of such assistants and employees shall state the number authorized and the amount of compensation to be allowed each assistant or employee; and should the fees of the County Attorney's office be insufficient to pay the compensation allowed to such officer, and also pay the allowable expense and the salaries of such assistants and employees of such office as the Commissioners' Court may determine are necessary to properly perform the duties and carry on the affairs of the office, the Commissioners' Court shall allow the payment of such portion of such expenses and salaries out of the general fund of the County as in their judgment may be necessary. The County Attorney may also appoint with the consent and approval of the Commissioners' Court an Assistant County Attorney who need not possess the qualifications of County Attorney, but who shall have the qualifications of a competent tax man, and a Clerk or Assistant to assist in the collection of delinquent taxes, and in the filing and prosecuting of tax suits. Such As-



sistant County Attorney shall receive such salary as the Commissioners' Court may determine, not to exceed Three Thousand (\$3,000.00) Dollars per annum, and such Clerk or Assistant a salary not to exceed One Thousand Eight Hundred (\$1,800.00) Dollars per annum, such salary to be paid monthly out of a percentage of all delinquent taxes collected.

[Acts 1933, 43rd Leg., 1st C.S., p. 145, ch. 49, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 54, ch. 18, § 1; Acts 1935, 44th Leg., p. 228, ch. 92, § 1.]

**Art. 3886b-1. Salaries of County Attorneys, Assistants, Investigators and Judges in Counties of 86,000 to 91,000**

Sec. 1. In any county having a population of not less than 86,000 nor more than 91,000, according to the last preceding federal census, the commissioners court may fix the salary of the county attorney at not more than \$18,500 per year. The county attorney, with the approval of the commissioners court, may appoint a first assistant county attorney and other assistants and investigators as necessary for the proper performance of the duties of his office. The first assistant county attorney shall receive a salary to be fixed by the commissioners court of not more than \$15,000 per year, and other assistant county attorneys shall receive not more than \$12,000 per year. The investigators for the county attorney shall receive a salary of not more than \$10,000 per year. All assistant county attorneys must be attorneys licensed to practice law in this state, and are authorized to perform all the duties imposed by law on the county attorney. The commissioners court may pay to the county attorney and his assistants and investigators actual and necessary travel expenses incurred in the discharge of their duties. Salaries and expenses authorized by this Act may be paid from the officers salary fund or the general fund, or both, as determined by the commissioners court.

Sec. 2. In any county having a population of not less than 86,000 nor more than 91,000, according to the last preceding federal census, the commissioners court may fix the salary of the judge of the county court and the judges of the county courts at law, at not more than the amount of annual salary paid by the State to any district judge in that county. The commissioners court may pay the judge of the county court and the judge of the county court at law, actual and necessary travel expenses incurred in the discharge of their duties. Salaries and expenses authorized by this Act may be paid from the officers salary fund or the general fund, or both, as determined by the commissioners court.

[Acts 1965, 59th Leg., p. 997, ch. 484; Acts 1969, 61st Leg., p. 492, ch. 159, § 1, eff. May 8, 1969; Acts 1971, 62nd Leg., p. 1293, ch. 335, § 1, eff. Aug. 30, 1971.]

Sections 2 and 3 of the 1971 amendatory act provided:  
"Sec. 2. As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes.

"Sec. 3. If any provision of this Act is declared unconstitutional, that declaration shall have no effect on the remaining provisions of this Act which can be given effect without the invalid portion, and provisions of this Act are declared to be severable."

**Art. 3886b-2. Assistant County Attorneys in Counties of 250,000 to 300,000; Appointment and Salaries**

Sec. 1. The county attorney in any county of this State having a population of not less than 250,000 and not more than 300,000 according to the last preceding federal census may appoint not more than five assistant county attorneys, one of whom may be designated first assistant county attorney. Assistant county attorneys must be licensed to practice law in the State of Texas, and they serve at the pleasure of the county attorney.

Sec. 2. The First Assistant County Attorney shall be paid a salary not to exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) a year. Other assistant county attorneys shall be paid a salary not to exceed Twelve Thousand Dollars (\$12,000.00) a year.

Sec. 3. The number of assistant county attorneys to be appointed and the salary to be paid each assistant shall be approved by the Commissioners Court.

[Acts 1969, 61st Leg., p. 491, ch. 158, eff. May 8, 1969; Acts 1971, 62nd Leg., p. 1830, ch. 542, § 59, eff. Sept. 1, 1971.]

**Art. 3886b-3. Salaries of Assistant County Attorneys in Counties of 74,000 to 75,800**

Sec. 1. The Commissioners Court in each county of this State whose population according to the last preceding federal census is not less than 74,000 and not more than 75,800 is hereby authorized, when in their judgment the financial condition of the county and the needs of the office of any assistant county attorney justify the increase, to enter an order or orders increasing the compensation of such assistant county attorney an additional amount or amounts so that his total annual salary paid and to be paid by said county shall not exceed the sum of \$9,600.

Sec. 2. This Act shall not be construed to decrease the total allowable annual compensation of any assistant county attorney allowed under existing laws. Nothing herein shall prevent more than one pay raise from time to time under the provisions of Section 1 hereof so long as said total salary shall not exceed said sum for any one calendar year.

Sec. 3. The provisions of this Act shall be cumulative of all other laws pertaining to the compensation of assistant county attorneys to the extent that any Act passed subsequent to the effective date of this Act increasing the salary of assistant county attorneys generally shall apply to increase the salary of assistant county attorneys affected by this Act, by a like percentage.

[Acts 1969, 61st Leg., p. 992, ch. 317, eff. May 23, 1969; Acts 1971, 62nd Leg., p. 1838, ch. 542, § 87, eff. Sept. 1, 1971.]

**Art. 3886c. Assistant Criminal District Attorneys and Other Appointees in Counties of Over 355,000**

In any county having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants the Criminal District Attorney shall be authorized to appoint nine (9) assistant criminal district attorneys, and fix their salaries at not to exceed the following amounts: Four (4) of said Assistant Criminal District Attorneys shall receive a salary not to exceed Forty-two Hundred Dollars (\$4200.00) per annum each; one of said Assistant Criminal District Attorneys shall receive a salary of not to exceed Thirty-six Hundred Dollars (\$3600.00) per annum; one of said Assistant District Attorneys shall receive a salary of not to exceed Three Thousand Dollars (\$3000.00) per annum; three of said Assistant Criminal District Attorneys shall receive a salary not to exceed Twenty-four Hundred Dollars (\$2400.00) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed the following amounts: One (1) of said investigators shall receive a salary of not to exceed Twenty-one Hundred and Sixty Dollars (\$2160.00) per annum, and the other two investigators shall each receive a salary of not to exceed Twenty-one Hundred Dollars (\$2100.00) per annum. He may employ two (2) court reporters and fix their salaries at not to exceed Twenty-one Hundred and Sixty Dollars (\$2160.00) per annum each. He may employ one (1) combination stenographer and accountant and fix his salary at not to exceed Twenty-one Hundred Dollars (\$2100.00) per annum. He may employ one (1) stenographer and fix his salary at not to exceed Eighteen Hundred Dollars (\$1800.00) per annum. He may employ one (1) Chief Civil Clerk and fix his salary at not to exceed Twenty-one Hundred Dollars (\$2100.00) per annum. He may employ two (2) abstracters and fix their salaries as follows: One (1) of said abstracters at not to exceed Twenty-one Hundred Dollars (\$2100.00) per annum, and the salary of the other abstracter at not to exceed Eighteen Hundred Dollars (\$1800.00) per annum. The salaries of all of such above provided for Assistants, Investigators, Court Reporters and other employes shall be paid monthly by said counties by warrants drawn upon the general funds thereof. Should such Criminal District Attorneys be of the opinion that the number of assistants, stenographers, investigators or other employes above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of said office, he may, with the advice and consent of the Commissioners' Court appoint not to exceed five (5) additional Assistant Criminal District Attorneys and fix their salaries as follows: One (1) of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Forty-two Hundred and Fifty Dollars (\$4250.00) per annum, one of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed

Thirty-six Hundred Dollars (\$3600.00) per annum, one of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Three Thousand Dollars (\$3,000.00) per annum, one of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Twenty-four Hundred Dollars (\$2400.00) per annum, and one (1) of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Twenty-one Hundred Dollars (\$2100.00) per annum. He may employ one (1) court reporter and fix his salary at not to exceed Twenty-one Hundred and Sixty Dollars (\$2160.00) per annum. He may employ one (1) stenographer and fix his salary at not to exceed Fifteen Hundred Dollars (\$1500.00) per annum. He may employ one (1) Civil Clerk and fix his salary at not to exceed Fifteen Hundred Dollars (\$1500.00) per annum. He may employ one (1) information clerk and fix his salary at not to exceed Nine Hundred Dollars (\$900.00) per annum, but such additional assistants or employes so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners' Court of the county in which such appointments are made. The salaries of such additional Assistants and employes shall be paid monthly by such Criminal District Attorney out of the excess fees of his office, which would otherwise go to said county.

[Acts 1933, 43rd Leg., 1st C.S., p. 134, ch. 40, § 1.]

**Art. 3886d. Investigators and Stenographers for District Attorneys in Counties of Less Than 30,000**

Provided that in any county in this State having a population less than thirty thousand (30,000) inhabitants, according to last preceding Federal Census, and which has a tax valuation exceeding Sixty Million Dollars (\$60,000,000.00), according to the last tax roll approved as required by law, the District Attorney or Criminal District Attorney may if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator who shall receive a salary not to exceed Three Thousand Dollars (\$3,000.00) per year. Such District Attorney or Criminal District Attorney may also, if in his judgment the efficient conduct of his office so requires, appoint a stenographer for said office, who shall receive a salary of not more than Eighteen Hundred Dollars (\$1800.00) per year. The salary of such investigator and stenographer shall be payable out of the General Fund of the county in which they are appointed, in twelve (12) equal installments, upon the certificate of the District Attorney or Criminal District Attorney of such county.

Provided, that in Montgomery County, the District Attorney of the Ninth Judicial District may, if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator in and for Montgomery County, who shall receive a salary of not to exceed Eighteen Hundred Dollars (\$1800) per

year. The salary of such investigator shall be payable out of the General Fund of Montgomery County, Texas, in twelve (12) equal installments upon the certificate of the District Attorney of said District.

[Acts 1934, 43rd Leg., 3rd C.S., p. 118, ch. 63, § 2; Acts 1939, 46th Leg., Spec.Laws, p. 751, § 1.]

#### Art. 3886e. Court Reporter; Salary

In any county of this State having a population in excess of one hundred and fifty thousand (150,000) and less than three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding Federal Census, and which alone constitutes two or more Judicial Districts, the District Attorney or Criminal District Attorney may appoint one Court Reporter who shall receive a salary not to exceed Three Thousand Dollars (\$3,000) per annum to be paid monthly by such county by warrant drawn upon the General Funds thereof.

[Acts 1935, 44th Leg., p. 802, ch. 343, § 1.]

#### Art. 3886f. Compensation of District Attorneys

Sec. 1. From and after September 1, 1967, in all judicial districts of this State, the district attorney in each such district shall receive from the State as pay for his services the sum of \$10,000 per year. Such salary shall be paid in twelve (12) equal monthly installments upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury. Provided that this Act shall not be construed as repealing any Act which allows the district attorneys travelling expenses or any other expenses or allowances.

Sec. 1a. The State's Attorney assigned to and practicing before the Court of Criminal Appeals shall receive from the state as pay for his services the sum of Seven Thousand Two Hundred (\$7,200.00) Dollars per year, such salary to be paid in twelve (12) equal monthly installments upon warrants drawn on the State Comptroller of Public Accounts upon the State Treasury.

Sec. 2. All fees, commissions and perquisites which may be earned and collected by District Attorneys affected by this Act shall be paid to the County Treasurer of the counties in which such fees are earned for the account of the proper fund. The provisions of this Section shall not apply to Article 7436 and the other provisions of the anti-trust laws of this state.

Sec. 3. Nothing in this Act shall be construed to repeal or in any manner affect any law now in existence with reference to Assistant District Attorneys, investigators or stenographers in Judicial Districts included in this Act.

Sec. 3a. This Act<sup>1</sup> shall not repeal any Act which permits or requires any county in this State to pay its district attorney any supplemental or additional salary out of the county funds.

Sec. 4. Nothing in this Act shall affect Criminal District Attorneys whose District is composed of only one county.

[Acts 1935, 44th Leg., 2nd C.S., p. 1710, ch. 442; Acts 1949, 51st Leg., p. 112, ch. 67, § 1; Acts 1953, 54th Leg., p. 871, ch. 329, §§ 1, 2; Acts 1967, 60th Leg., p. 2072, ch. 773, § 1, eff. Sept. 1, 1967.]

<sup>1</sup> Acts 1955, 54th Leg., p. 871, ch. 329, amending section 1 of this article.

#### Art. 3886g. 72nd District

Sec. 1. The commissioners courts of the counties comprising the 72nd Judicial District shall pay the district attorney at least \$2,410 a year in addition to the salary paid to him by the State.

Sec. 2. In no event shall the district attorney be paid a total salary less than the salary of the county attorney of Lubbock County.

Sec. 3. The supplemental salary to be paid the District Attorney of the 72nd Judicial District by the Commissioners Courts of the counties comprising said district shall be paid on the basis of the total number of criminal causes filed in the respective counties during the year preceding the year for which the supplemental salary is to be fixed and paid.

[Acts 1951, 52nd Leg., p. 606, ch. 358; Acts 1965, 59th Leg., p. 858, ch. 419, § 1.]

#### Art. 3886h. Compensation of District Attorney and Assistants in 34th District

Sec. 1. The salary of the District Attorney of the 34th Judicial District shall be fixed by the Commissioners Court of El Paso County at not more than Twenty-Five Thousand Dollars (\$25,000) per year. The First Assistant District Attorney and the First Assistant Administrative District Attorney of the 34th Judicial District shall receive a salary not to exceed Nineteen Thousand, Two Hundred Dollars (\$19,200) per year; and the other Assistant District Attorneys and Investigators in the District shall receive salaries not to exceed Fifteen Thousand, Five Hundred Dollars (\$15,500) per year, the provisions of this Act relating to the District Attorney of the 34th Judicial District, First Assistants, Assistants and Investigators to become effective upon passage hereof.

Sec. 2. The Commissioners Court of El Paso County, Texas, in said Thirty-fourth Judicial District, is hereby authorized to pay the salaries of the Assistants and Investigators as provided in Section 1 of this Act, and to supplement the salary of the District Attorney paid by the State of Texas in such an amount that the total salary paid shall not exceed the maximum provided for in Section 1 hereof. Nothing herein shall affect the present existing law relating to the manner of selecting, determining the number, and fixing the amount of salaries to be paid the First Assistant District Attorney, the Assistant District Attorneys and Investigators except as herein provided.

[Acts 1953, 53rd Leg., p. 21, ch. 12; Acts 1957, 55th Leg., p. 862, ch. 378, § 1; Acts 1959, 56th Leg., 1st C.S., p. 38, ch. 15, § 1; Acts 1963, 58th Leg., p. 29, ch. 22, § 1;

Acts 1969, 61st Leg., p. 2299, ch. 776, § 1(a), eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2495, ch. 818, § 1, eff. June 8, 1971; Acts 1973, 63rd Leg., p. 120, ch. 60, § 1, eff. April 26, 1973.]

**Art. 3886i. District Attorneys in Counties of 600,000 to 700,000; Salary**

From and after September 1, 1961, in all counties of a population of not less than six hundred thousand (600,000) nor more than seven hundred thousand (700,000), the district attorneys in each of such counties may receive as pay for their services the sum of Sixteen Thousand, Five Hundred Dollars (\$16,500) per year. The Commissioners Court of such counties may supplement the salary of the district attorney paid by the State of Texas in an amount to provide the salary provided herein. [Acts 1961, 57th Leg., p. 1065, ch. 477, § 1.]

**Art. 3886j. District Attorneys and Criminal District Attorneys in Counties of 600,000 to 700,000**

In counties having a population of more than 600,000 and less than 700,000, according to the last preceding federal census, the district attorney and the criminal district attorney shall be compensated for their services in such amount as may be fixed by the general law relating to the salary paid to district attorneys by the state, and in addition their salaries may be supplemented by the commissioners courts of the counties; provided, however, that the total salary of such district attorney or criminal district attorney shall not be supplemented to exceed the sum of \$20,500 per year. [Acts 1969, 61st Leg., p. 1680, ch. 541, eff. Sept. 1, 1969.]

**Art. 3886k. District Attorneys and Criminal District Attorneys in Counties of Not Less Than 1,200,000; Compensation; Private Practice**

Sec. 1. In all counties of this State having a population of not less than one million two hundred thousand (1,200,000) inhabitants, according to the last preceding federal census, the Commissioners Court shall fix the salary of the Criminal District Attorney and District Attorney at not less than Thirty-five Thousand Dollars (\$35,000) per annum, which shall be paid in twelve (12) equal monthly installments.

Sec. 2. When this bill becomes effective, such Criminal District Attorney or District Attorney shall be prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

[Acts 1971, 62nd Leg., p. 1042, ch. 210, eff. May 14, 1971; Acts 1973, 63rd Leg., p. 660, ch. 277, § 1, eff. June 11, 1973.]

**Art. 3887. County Attorney**

In any county having a population of one hundred thousand (100,000) or less, and containing a city having a population in excess of fifty thousand (50,000) in which county there is no District Attorney, the County Attorney may appoint not to exceed three Assistant County Attorneys, two of whom shall receive a salary not to exceed Two Thousand Seven Hun-

dred (\$2700.00) Dollars per annum each, and one of whom shall receive a salary of not to exceed Two Thousand One Hundred (\$2100.00) Dollars per annum. He may appoint an investigator who shall receive a salary not to exceed One Thousand Eight Hundred (\$1800.00) Dollars per annum. He may appoint a stenographer who shall receive a salary not to exceed One Thousand Five Hundred (\$1500.00) Dollars per annum. The salaries of such assistants, investigator and stenographer shall be paid monthly by said county by warrants drawn on the general fund thereof. Any such assistant, investigator or stenographer shall be subject to removal at the will of such County Attorney. All fees collected by such County Attorney, including fees for representing the State in criminal actions in corporation courts, shall be accountable for and disposed of in the manner provided in this chapter.

In any county having a population of more than one hundred thirty thousand (130,000) and less than one hundred fifty thousand (150,000), and containing two cities of fifty thousand (50,000) population or more each, in which county there is no District Attorney, the Commissioners' Court may, should the fees of the County Attorney's office be insufficient to pay the compensation allowed herein to such officer, and also pay the allowable expenses as otherwise provided in this Act and the salaries of such deputies, assistants and employees of such office as the Commissioners' Court may determine are necessary to properly perform the duties and carry on the affairs of the office, allow the payment of such portion of such expenses and salaries out of the general fund of the county as in their judgment may be necessary.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 256, ch. 112; Acts 1931, 42nd Leg., p. 800, ch. 326; Acts 1933, 43rd Leg., p. 734, ch. 220, §§ 6, 9.]

**Art. 3887a. Compensation of County Attorneys in Counties of 48,540 to 48,800**

In all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the last preceding or any future Federal Census, where the Commissioners' Court shall have determined, or shall determine, to compensate the county attorney of such counties upon an annual salary basis according to law, such Court shall fix the salary of such county attorneys at not to exceed Two Thousand Four Hundred (\$2,400.00) Dollars per annum.

[Acts 1937, 45th Leg., 2nd C.S., p. 1878, ch. 11, § 1.]

**Art. 3887a-1. County Attorneys in Counties of 71,100 to 71,200; Compensation; Private Practice**

Sec. 1. In all counties having a population of more than 71,100 inhabitants and less than 71,200 inhabitants according to the last preceding Federal Census the Commissioners Court may fix the salaries of the county attorney at

not more than \$20,000.00 per annum, payable in equal monthly installments.

Sec. 2. In all counties having a population of more than 71,100 inhabitants and less than 71,200 inhabitants, according to the last preceding Federal Census, no county attorney or assistant county attorney may engage in the private practice of law except in regard to civil matters involving the aforesaid counties.

Sec. 3. Nothing herein shall prohibit the Commissioners Court in the aforesaid counties from employing and compensating the county attorney to represent the county in civil and condemnation cases.

[Acts 1969, 61st Leg., p. 2213, ch. 755, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 1161, ch. 266, § 1, eff. May 19, 1971; Acts 1971, 62nd Leg., p. 1847, ch. 542, § 120, eff. Sept. 1, 1971.]

#### Art. 3887a-2. Compensation of County Attorneys in Counties of 300,000 to 500,000

The county attorney in all counties having a population of not less than 300,000 nor more than 500,000 according to the last preceding federal census, shall be paid a salary not to exceed \$16,500 per year. Beginning January 1, 1971, the salary of the county attorney in those counties shall be fixed by the commissioners court at \$18,000 per year.

[Acts 1969, 61st Leg., p. 2300, ch. 776, § 2, eff. Sept. 1, 1969.]

#### Art. 3887a-3. County Attorneys in Counties of Not Less Than 1,500,000; Compensation; Private Practice

Sec. 1. In all counties of this state having a population of not less than 1,500,000 inhabitants, according to the last preceding federal census, the commissioners court shall fix the salary of the county attorney, who represents the county in civil matters only, not to exceed \$34,000 per annum, which shall be paid in 12 equal monthly installments.

Sec. 2. After the effective date of this Act, a county attorney receiving a salary under Section 1 of this Act is prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

[Acts 1971, 62nd Leg., p. 2406, ch. 756, eff. Aug. 30, 1971.]

#### Art. 3887b. Counties of 650,000 or More; Salary; Assistants

Sec. 1. County Attorneys in counties having a population of six hundred and fifty thousand (650,000) inhabitants or more according to the last preceding Federal Census shall receive an annual salary of not less than Nine Thousand, Nine Hundred Dollars (\$9,900) nor more than Eleven Thousand, Eight Hundred Dollars (\$11,800), the exact amount to be fixed by the Commissioners Court but at a sum not less than the minimum nor more than the maximum provided above.

Sec. 2. In all counties in which this bill applies, whenever the County Attorney shall require the service of assistants, investigators

and secretaries, in the performance of his duties, he shall apply to the Commissioners Court for authority to appoint such assistants, investigators and secretaries stating by sworn application the number needed, the position to be filled, the duties to be performed and the amount to be paid. The court shall make its order authorizing the appointment of such assistants, investigators and secretaries and fix the compensation to be paid them, and determine the number to be appointed as in the discretion of said court may be proper. Provided that in no case shall the Commissioners Court, or any member thereof, attempt to influence the appointment of any person as assistant, investigator or secretary in the County Attorney's office. All of the salaries provided for in this Act shall be paid from the officers' salary fund if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the officers' salary fund.

[Acts 1953, 53rd Leg., p. 788, ch. 317.]

#### Art. 3888. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

#### Art. 3888a. Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9

#### Art. 3888b. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

#### Art. 3889. Census to Govern

The preceding Federal census shall govern as to population in all cases under any provision of this chapter.

[Acts 1925, S.B. 84.]

#### Art. 3890. State or County Not Liable

The amounts allowed to each officer mentioned in Article 3883 may be retained out of the fees collected by him under existing laws; but in no case shall the State or county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter; nor be responsible for the pay of any deputy or assistant.

[Acts 1925, S.B. 84.]

#### Art. 3891. Disposition of Fees; Increase of Compensation of Officers

Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be

deemed excess fees, and shall be disposed of in the manner hereinafter provided.

In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400).

In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Thirty-five Hundred Dollars (\$3500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Eighteen Hundred Dollars (\$1800).

In counties containing as many as thirty-seven thousand, five hundred and one (37,501) and not more than sixty thousand (60,000), or containing a city of over twenty-five thousand (25,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Forty-two Hundred and Fifty Dollars (\$4250). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Twenty-two Hundred Dollars (\$2200).

In counties containing sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Forty-seven Hundred and Fifty Dollars (\$4750). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Twenty-six Hundred Dollars (\$2600).

In counties containing as many as one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Fifty-five Hundred Dollars (\$5500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Three Thousand Dollars (\$3000).

In counties containing as many as one hundred and fifty thousand and one (150,001) or more inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts

to Sixty-five Hundred Dollars (\$6500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Four Thousand Dollars (\$4000).

All current fees earned and collected by officers named in Article 3883 during any fiscal year in excess of the maximum and excess allowed by this Act, and for their services and for the services of their deputies and assistants and authorized expenses, together with all delinquent fees collected and not used as provided in Article 3892, or used to pay salaries of deputies and assistants when current fees are insufficient, shall be paid into the County Treasury in the county where the excess accrued.

All fees due and not collected, as shown in the report required by Article 3897, shall be collected by the officer to whose office the fees accrued and shall be disposed of by said officer in accordance with the provisions of this Act.

The compensations, limitations and maximums herein fixed in this Act for officers shall include and apply to all officers mentioned herein in each and every county of this State, and it is hereby declared to be the intention of the Legislature that the provisions of this Act shall apply to each of said officers, and any special or general law inconsistent with the provisions hereof is hereby expressly repealed in so far as the same may be inconsistent with this Act.

The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs for apprehension of criminals or fugitives from justice and for the recovery of stolen property, and moneys received by County Judges and Justices of the Peace for performing marriage ceremonies, which sum shall not be accountable for and not required to be reported as fees of office.

(a) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred (\$3600.00) Dollars.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 870, ch. 363; Acts 1933, 43rd Leg., p. 734, ch. 220, § 2; Acts 1935, 44th Leg., p. 752, ch. 327, § 1; Acts 1945, 49th Leg., p. 244, ch. 179, § 1.]

**Repeal**

*Article 3891, as amended, is repealed in so far as the provisions thereof are applicable to the officers named in art. 3883h. See article 3883h, § 6, ante.*

**Art. 3892. Failure to Collect Maximum**

Any officer mentioned in this Chapter who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation authorized by Articles 3883, 3883-A, and 3886 for the year in which delinquent fees were charged, and also retain the amount of excess fees authorized by law, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected; provided, the provisions of this Article shall not apply to any officer after one year from the date he ceases to hold the office to which any delinquent fee is due, and in the event the officer earning the fees that are delinquent has not collected the same within twelve months after he ceases to hold the office, the amount of fees collected shall be paid into the county treasury. Provided, however, that nothing in this Act precludes the payment of ex-officio fees in accordance with Title 61 of the Revised Civil Statutes of Texas, 1925, as part of the maximum compensation. Provided, that any change made in this Article by this Act shall not apply to fees heretofore earned.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 4.]

**Art. 3893. District Clerks**

In counties having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court.

[Acts 1925, S.B. 84.]

**Art. 3894. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10****Art. 3895. Ex-officio Services**

The Commissioners' Court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio

herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 734, ch. 220, § 7.]

**Art. 3896. To Keep Accounts**

Each district, county and precinct officer shall keep a correct statement of all fees earned by him and all sums coming into his hands as deposits for costs, together with all trust funds placed in the registry of the court, fees of office and commissions in a book or in books to be provided him for that purpose, in which the officer, at the time when such deposits are made or such fees and commissions are earned and when any or all of such funds shall come into his hands, shall enter the same; and it shall be the duty of the county auditor in counties having a county auditor to annually examine the books and accounts of such officers and to report his findings to the next succeeding grand jury or district court. In counties having no county auditor, it shall be the duty of the Commissioners' Court to make the examination of said books and accounts or have the same made and to make report to the grand jury as hereinabove provided.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 8.]

**Art. 3897. Sworn Statement**

Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report remains not filed, said officer shall be liable to a penalty of Twenty-Five (\$25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 5; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 9.]

**Repeal**

*Article 3897 is repealed by Acts 1965, 59th Leg., p. 610, ch. 302, § 2, insofar as the provisions thereof are applicable to counties whose officers are compensated on a salary basis.*

**Art. 3898. Fiscal Year**

The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees, commissions and compensation collected by him during said month. Whenever such officer serves for a fractional part of the fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 10.]

**Art. 3899. Expense Account**

(a) At the close of each month of his tenure of office, each officer named herein who is compensated on a fee basis shall make, as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office such as stationery, stamps, telephone, premiums on officials' bonds including the cost of surety bonds for his deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses, and other necessary expenses; provided, that in addition to the officers named herein, the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector shall likewise make a report on the premiums on officials' bonds, including the cost of surety bonds for any deputies, and said premiums shall be subject to payment out of the fees of said office, as herein otherwise provided for the officers named; and provided further that if any of the officers so designated are on a salary rather than a fee basis, then all such bond premiums for officers and their deputies shall be paid from the General Fund of the county. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas, and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identifi-

cation. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position, and amount paid each; and in no event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies, and clerks, shall be paid out of the fees earned by such officer. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of his official duties, which, if purchased by the county, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county, and they shall be and remain the property of the county. The expense of maintenance, depreciation, and operation of such automobiles as may be allowed, whether purchased by the county or owned by the sheriff or his deputies personally, shall be paid for by the sheriff and the amount thereof shall be reported by the sheriff, on the report above mentioned, in the same manner as herein provided for other expenses.

(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be entitled and permitted to purchase or charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premiums on fire, burglary, theft, robbery insurance protecting public funds, and including the cost of surety bonds for his deputies, provided that expenses incurred for premiums on officials' bonds for the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector, including the cost of surety bonds for any deputies of any such officers, may be also included, and such expenses to be passed on, predetermined and allowed in the time and amount, as nearly as possible, by the Commissioners Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. The Commissioners Court of the county of the sheriff's residence



may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification, such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment, in keeping with the system in use with the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the county auditor, if any, otherwise by the Commissioners Court. Each officer, shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices, and requisitions shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said county auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers Salary Fund unless otherwise provided herein.

The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be reported and paid in the same manner as herein provided for other expenses.

Where the automobile or automobiles are owned by the Sheriff or his deputies, they shall be allowed four (4) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this section. No automobile shall be allowed for any Deputy Sheriff except those regularly employed in outside work. It shall be the duty of the County Auditor, if any, otherwise the Commissioners Court, to check the speedometer reading of each of said automobiles, owned by the county once each month and to keep a public record thereof; no automobile owned by the county shall be used for any private purpose.

(c) Provided that in all counties of this State having a population of not less than thirty thousand, nine hundred (30,900) and not more than thirty thousand, nine hundred and fifty (30,950) according to the last preceding Federal Census wherein there is no District Attorney and the Criminal District Attorney performing the duties of a District Attorney, such Criminal District Attorney performing the duties of a District Attorney shall be empowered and permitted to incur reasonable and necessary expenses in investigating crime and accumulating evidence in criminal cases; and shall be allowed Three (3) Cents a mile for each mile traveled by him in an automobile furnished by him in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile; such expenses shall be reported to the Commissioners Court of each county affected by this Act as other expenses are reported and shall be paid by said Commissioners Court as such other expenses are paid.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 734, ch. 220, § 4; Acts 1935, 44th Leg., p. 718, ch. 311, § 1; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 11; Acts 1937, 45th Leg., p. 1340, ch. 498, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1817, ch. 37, § 1; Acts 1941, 47th Leg., p. 1390, ch. 629, §§ 1, 2.]

**Art. 3899a. Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9**

**Art. 3899b. Offices, Office Supplies, Furniture and Automobiles; Aid for District Attorneys**

Sec. 1. There shall be allowed to County Judges, Clerks of the District and County Courts, Sheriffs, County Treasurers, Tax Assessors and Collectors, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the Commissioners Court out of the County Treasury; and suitable offices shall also be provided by the Commissioners Court for said officers at the expense of the county. And such books and stationery as are necessary in the performance of their duties shall also be furnished Justices of the Peace by said Commissioners Court. Provided all purchases herein must be approved by Commissioners Court, and must be made under the provisions of Article 1659, Revised Civil Statutes of Texas, 1925.

Sec. 1a. In addition to the expenditures authorized in Section 1, in all counties having a population in excess of one million, five hundred thousand (1,500,000) inhabitants according to the last preceding federal census, the Commissioners Court may, in its discretion, at the expense of the county, furnish justices of the peace such courtrooms, offices and office furniture as may be necessary for the performance of their duties, and furnish constables such offices and office furniture as may be necessary for the performance of their duties. Provided that nothing contained herein shall be construed so as to modify the provisions of

Article 2379 of the Revised Civil Statutes of Texas, 1925.

Sec. 2. Suitable offices and stationery and blanks necessary in the performance of their duties may in the discretion of the Commissioners Court also be furnished to resident District Judges, resident District and County Attorneys, County Superintendents and County Surveyors, and may be paid for on order of the Commissioners Court out of the County Treasury.

Sec. 3. In addition to the expenditures authorized in the preceding paragraphs, Numbers 1 and 2 of said Article 3899b, in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the preceding or any future Federal Census, the Commissioners Court of the county of the Tax Assessor and Tax Collector's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the Tax Assessor and Collector or his deputies in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county. All expenses incurred in the operation, repair, and maintenance of such automobile or automobiles purchased by the county shall be incurred and paid in the manner provided by subdivision 1 of Section 19 of Acts 1935, Forty-fourth Legislature, Second Called Session, Chapter 465.<sup>1</sup> The Commissioners Court may in lieu of the purchase of automobiles for the use of the Assessor and Collector of Taxes, authorize the use of personally owned automobiles of the Assessor and Collector of Taxes or his deputies in which event such Assessor and Collector of Taxes or his deputies shall file monthly sworn reports with the County Auditor showing mileage covered by such automobiles on official business and the nature thereof and may be allowed ten cents (10¢) per mile for each mile traveled which sum shall cover all expenses of maintenance, operation, and depreciation, and claims therefor shall be audited and allowed in the manner provided by Section 19 of Acts, 1935, Second Called Session, Chapter 465, for other expenses of County and District Officers. The District Attorney or Criminal District Attorney may be allowed by order of the Commissioners Court of his county, such amount as said Court may deem necessary to pay for, or aid in, the proper administration of the duties of such office not to exceed Twenty-five Hundred Dollars (\$2,500) in any one calendar year; provided that such amounts as may be allowed shall be allowed upon written application of such District Attorney or Criminal District Attorney showing the necessity therefor, and provided further that said Commissioners Court may require any other evidence that it may deem necessary to show the necessity for such expenditures, and that its judgment in allowing or refusing to allow the same shall be final.

No expenditures made in accordance with the preceding paragraph shall lessen or diminish the amount of fees that said District Attorney or Criminal District Attorney may retain or receive as compensation under the terms of Articles 3883 and 3891 of the Revised Civil Statutes as amended by the Acts of the Forty-third Legislature or under the terms of Article 3892 of said Statutes as amended by the Acts of the Forty-first Legislature and this Act shall be cumulative of any other Act now in effect permitting such Commissioners Court to defray, or aid in defraying the expenses incurred by such County Tax Assessor and Collector, or District Attorneys or Criminal District Attorneys, and all such Acts shall be and remain valid and effective and wholly unaffected hereby.

[Acts 1929, 41st Leg., p. 448, ch. 207; Acts 1935, 44th Leg., p. 726, ch. 316, § 1; Acts 1945, 49th Leg., p. 182, ch. 140, § 1; Acts 1953, 53rd Leg., p. 579, ch. 222, § 1; Acts 1963, 58th Leg., p. 971, ch. 394, § 1; Acts 1963, 58th Leg., p. 742, ch. 278, § 1; Acts 1971, 62nd Leg., p. 1836, ch. 542, § 80, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 2442, ch. 785, § 1, eff. June 8, 1971.]

<sup>1</sup> Article 3912e, § 19.

**Art. 3899b-1. Automobile Expense Allowances for Tax Assessors and Collectors in Counties of 15,500 to 15,700**

This Act applies in any county having a population of not less than 15,500 nor more than 15,700 according to the last preceding federal census. The Commissioners Court may, in lieu of purchasing automobiles for the use of the county tax assessor and collector, authorize the use of personally owned automobiles by him and his deputies for official business. A person so authorized may be allowed an amount not to exceed eight cents per mile for each mile traveled on official business, but not more than \$100 during any calendar month. He shall file monthly sworn reports with the county auditor showing mileage covered by the automobile on official business and stating the nature of the business. Claims for reimbursement under this Act shall be audited and allowed in the manner provided by Section 19, Chapter 465, Acts of the 44th Legislature, 2nd Called Session, 1935, for other expenses of county and district officers.

[Acts 1965, 59th Leg., p. 1412, ch. 625; Acts 1971, 62nd Leg., p. 1822, ch. 542, § 26, eff. Sept. 1, 1971.]

**Art. 3899c. Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9**

**Art. 3900. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10**

**Art. 3901. Collector and Assessor**

Each assessor and collector of taxes, at the time of his settlement with the Comptroller of Public Accounts of the State of Texas, shall file with the Comptroller a copy of the sworn statement required under Article 3897 as herein amended.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 12.]

**Art. 3901-1. Maximum Fees of Assessor-Collector in Counties of 13,350 to 13,440 Population**

Sec. 1. In all counties having a population of not less than thirteen thousand, three hundred and fifty (13,350) and not more than thirteen thousand, four hundred and forty (13,440), according to the most recent available Federal Census and each available Federal Census thereafter, the Assessors-Collectors of Taxes of such counties shall be entitled to receive the fees of office earned by their offices in accordance with the provisions of the Maximum Fee Bill; provided, however, that in such counties the maximum amount of fees which may be retained by such officer, including all excess fees, shall be Four Thousand Dollars (\$4,000), provided such office earns sufficient fees to pay this amount.

Sec. 2. Each Assessor-Collector of Taxes earning fees in excess of Four Thousand Dollars (\$4,000) shall make disposition of such excess in accordance with the provisions of the Maximum Fee Bill. All Assessors-Collectors in counties hereby affected shall be entitled to deputies and assistants in the manner authorized in the Maximum Fee Bill.

[Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45.]

**Art. 3902. Deputies, Assistants or Clerks; Appointment; Compensation and Salaries; Increase**

Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy

not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each.

1-a. In counties having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, and whose tax values exceed One Hundred Million Dollars (\$100,000,000), according to the last approved tax rolls, the first assistant to the Tax Assessor and Collector and the first assistant to the County Clerk may each receive an annual salary of not to exceed Three Thousand Dollars (\$3,000) per annum, and the cashier to the Tax Assessor and Collector and the County Clerk may each receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum. The Tax Assessor and Collector shall designate in addition to the first assistant and cashier, two heads of departments, one to be in charge of assessing and one to be in charge of collecting in such counties, who may receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and any additional assistants, deputies or clerks to the Tax Assessor and Collector or the County Clerk may receive an annual salary of not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum.

1a. In counties having a population of not less than nineteen thousand, eight hundred and fifty (19,850) and not more than nineteen thousand, eight hundred and ninety-five (19,895) inhabitants, according to the last preceding Federal Census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary or justified by the Commissioners Court of such counties for heads of departments or chief deputies, a sum not to exceed Two Hundred Dollars (\$200) per annum may be allowed, in addition to the regular salary for such heads of departments or chief deputies, when such officers shall have previously served the county for not less than two (2) continuous years.

1b. In counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary, or justified by the Commissioners Court of such counties for heads of departments or Chief Deputies, a sum not to exceed Two Hundred Dollars (\$200) per annum may be allowed, in addition to the regular salary for such heads of departments or Chief Deputies, when

such officers shall have previously served the County for not less than three (3) continuous years.

2. In counties having a population of twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, first assistant or chief deputy not to exceed Two Thousand Dollars (\$2,000) per annum; other assistants, deputies, or clerks not to exceed Seventeen Hundred Dollars (\$1700) per annum each. Provided, however, that in all counties containing a population of not less than thirty thousand (30,000) nor more than thirty-seven thousand, five hundred (37,500), according to the last preceding Federal Census, and having a valuation in excess of Eighty-five Million Dollars (\$85,000,000), and in all counties having an assessed valuation of not less than Twenty-seven Million, Five Hundred Thousand Dollars (\$27,500,000) nor more than Twenty-seven Million, Seven Hundred Thousand Dollars (\$27,700,000), according to the last approved tax roll, and containing a population of not less than fifty-three thousand, nine hundred (53,900) nor more than fifty-four thousand (54,000), according to the last preceding Federal Census, four (4) deputies in the Tax Collector and Assessor's office may receive not to exceed Twenty-four Hundred Dollars (\$2400) per annum each, the remainder of the deputies in said office shall receive not exceeding Seventeen Hundred Dollars (\$1700) per annum each.

3. In counties having a population of thirty-seven thousand five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, first assistant or chief deputy not to exceed Twenty-one Hundred (\$2100.00) Dollars per annum; other assistants, deputies or clerks not to exceed Eighteen Hundred (\$1800.00) Dollars per annum each. Provided that nothing in this Act shall be construed as repealing or affecting Section 2 of H.B. No. 694, Chapter 315, Acts 1935, Forty-fourth Legislature, page 724.

3a. In counties having a population of not less than forty-eight thousand nine hundred (48,900) and not more than forty-nine thousand (49,000) inhabitants, according to the preceding Federal Census, the County Judge may employ one person as office assistant, bookkeeper and stenographer at a salary to be fixed by the County Judge not to exceed Eighteen Hundred (\$1,800.00) Dollars per annum, in twelve equal monthly installments out of the general fund of the county.

4. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, first assistant or chief deputy not to exceed Twenty-four Hundred (\$2400.00) Dollars per annum; other as-

sistants, deputies or clerks not to exceed Twenty-one Hundred (\$2100.00) Dollars per annum each.

4a. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, according to the preceding Federal Census and containing a city of not less than fifty-two thousand (52,000) inhabitants according to the preceding Federal Census, heads of departments may be allowed by the Commissioners Court, when in their judgment such allowable is justified, the sum of Two Hundred Dollars (\$200) per annum in addition to the amount hereinbefore authorized to either First Assistant or Chief Deputy, or other Assistants, Deputies or Clerks, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two (2) continuous years; provided no heads of departments shall be created except where the person sought to be appointed shall be in actual charge of some department, with Deputies or Assistants, under his supervision, or a department approved by the Court, and only in offices capable of a bona fide subdivision into departments.

5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each.

6. In counties having a population of one hundred fifty thousand and one (150,001) and not more than one hundred ninety thousand (190,000) inhabitants, first assistant or chief deputy not to exceed Three Thousand (\$3,000.00) Dollars per annum; other assistants, deputies or clerks not to exceed Twenty-four Hundred (\$2,400.00) Dollars per annum each.

7. That in all counties in this State having a population of not less than thirty-nine thousand, four hundred and ninety-six (39,496) and not more than forty thousand (40,000), according to the last preceding Federal Census, first assistant county attorneys shall be entitled to a salary of not less than Sixteen Hundred and Twenty Dollars (\$1620) per annum nor more than Nineteen Hundred and Twenty

Dollars (\$1920) per annum, to be set by the Commissioners Court of the County. The amount of the salary shall be paid on the first of each month and in twelve (12) equal monthly payments.

8. That in all counties of the State having a population of not less than twenty-four thousand, nine hundred (24,900) inhabitants and not more than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, first assistants or chief deputies shall receive a salary not to exceed Two Thousand Dollars (\$2,000) per annum, and other assistant deputies or clerks shall receive salaries not to exceed Seventeen Hundred Dollars (\$1700) each.

9. The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed Thirty-six Hundred (\$3600.00) Dollars.

10. In all counties having a population of not less than fifty-one thousand seven hundred eighty-two (51,782) inhabitants, and not more than fifty-two thousand five hundred (52,500) inhabitants, according to the last preceding Federal Census, the Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county, or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty (20%) per cent of the maximum sum now allowed under the present law. Provided that nothing in this Act shall be construed as repealing or affecting Sections 3 and 9 of Article 3902, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., 1st C.S., p. 225, ch. 92; Acts 1931, 42nd Leg., p. 364, ch. 214; Acts 1933, 43rd Leg., p. 734, ch. 220, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 123, ch. 59, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 118, ch. 63, § 1; Acts 1935, 44th Leg., p. 667, ch. 282, § 1; Acts 1935, 44th Leg., p. 724, ch. 315, § 2; Acts 1935, 44th Leg., p. 752, ch. 327, § 2; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 14; Acts 1937, 45th Leg., p. 301, ch. 157, § 1; Acts 1937, 45th Leg., p. 581, ch. 290, § 1; Acts 1937, 45th Leg., p. 1330, ch. 493, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1870, ch. 6, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 736, § 1; p. 740, § 1; Acts 1941, 47th Leg., p. 153, ch. 114, § 1; Acts 1941, 47th Leg., p. 540, ch. 334, § 1; Acts 1945, 49th Leg., p. 244, ch. 179, § 2; Acts 1947, 50th Leg., p. 266, ch. 162, § 1.]

Arts. 3902a to 3902f. Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9

**Art. 3902f-1. Increase of Compensation of Deputies, Clerks and Assistants by Commissioners Court**

Sec. 1. In each county in the State of Texas having a population of one hundred and fifty thousand (150,000) inhabitants or under according to the last preceding Federal Census, or any future Federal Census, the Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed thirty-five per cent (35%) of the sum allowed under the law at the present time.

Sec. 1A. No increase allowed under Section 1 of this Act shall result in any deputy, assistant, or clerk receiving a greater salary than is allowed the district, county or precinct officer under whom such deputy, assistant or clerk is employed.

Sec. 2. The provisions of this Act shall be cumulative of all other laws pertaining to the compensation of deputies, assistants and clerks of any district, county or precinct officer.

Sec. 3. If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

[Acts 1953, 53rd Leg., p. 777, ch. 308.]

**Art. 3902f-2. Counties of 11,400 to 11,500; Compensation of Deputies, Clerks and Assistants**

Sec. 1. In each county of the State of Texas having a population of more than eleven thousand, four hundred (11,400) and less than eleven thousand, five hundred (11,500) according to the last preceding federal census, the Commissioners Court is hereby authorized to fix the salaries of the deputies, assistants and clerks of any district, county or precinct officer at an amount not to exceed Four Thousand, Two Hundred Dollars (\$4,200) per year.

Sec. 2. No salary fixed under Section 1 of this Act shall result in any deputy, assistant, or clerk receiving a greater salary than is allowed the district, county or precinct officer under whom such deputy, assistant or clerk is employed.

Sec. 3. The provisions of this Act shall be cumulative of all other laws pertaining to the compensation of deputies, assistants and clerks of any district, county or precinct officer.

[Acts 1961, 57th Leg., p. 1172, ch. 527, Acts 1971, 62nd Leg., p. 1838, ch. 542, § 91, eff. Sept. 1, 1971.]

**Art. 3902f-3. Counties of 29,300 to 31,000; Compensation of Deputies, Assistants, Clerks or Stenographers**

Sec. 1. In all counties of this State having a population according to the last preceding federal census of more than 29,300 persons and less than 31,000 persons, the Commissioners Court of such counties may fix the compensation for the deputies, assistants, clerks or stenographers of the county officials of such county, except the deputies of the sheriff of said county, at an amount not to exceed \$5,200 to be paid in twelve equal monthly installments.

Sec. 2. Provided further that the commissioners court of the counties affected by this Act may not fix the salaries of the deputies, assistants, clerks or stenographers of the officials in such county at a lesser amount than the salary paid such deputies, assistants, clerks or stenographers for the calendar year 1966.

[Acts 1967, 60th Leg., p. 986, ch. 430, eff. June 12, 1967; Acts 1971, 62nd Leg., p. 1836, ch. 542, § 82, eff. Sept. 1, 1971.]

**Art. 3902f-4. Counties of 96,000 to 97,500; Increase in Compensation of Chief Deputies**

The Commissioners Court in any county of this State having a population of not less than 96,000 nor more than 97,500 according to the last preceding federal census is hereby authorized, when in its judgment the financial condition of the county and the needs of the chief deputies of the district, county, and precinct officials justify the increase, to enter an order increasing the compensation of such chief deputies in an additional amount not to exceed 35 percent of the sum that they were actually paid on June 11, 1969.

[Acts 1969, 61st Leg., p. 1744, ch. 576, § 1, eff. June 11, 1969; Acts 1971, 62nd Leg., p. 1841, ch. 542, § 100, eff. Sept. 1, 1971.]

**Art. 3902f-5. Deputies, Assistants and Clerks of District, County or Precinct Officers; Increase in Compensation**

The Commissioners Court of any county in the State is authorized to enter an order increasing the compensation of a deputy, assistant, or clerk of any district, county, or precinct officer in an additional amount not to exceed 35 per cent of the maximum sum now allowed under present law, when in the judgment of the court the financial condition of the county and needs of the deputies, assistants, and clerks justify the increase.

[Acts 1971, 62nd Leg., p. 1223, ch. 299, § 1, eff. May 24, 1971.]

**Art. 3902f-6. Counties of 86,000 to 91,000; Compensation of Deputies, Assistants, Clerks and Secretaries**

In all counties of this state having a population according to the last preceding federal census of not less than 86,000 persons nor more than 91,000, the commissioners court of such counties may fix a compensation of not

more than \$10,500 per year for chief deputies and of not more than \$9,000 per year for all other deputies, assistants, clerks, and secretaries of the officials of such county, except assistant county attorneys.

[Acts 1971, 62nd Leg., p. 1294, ch. 336, § 1, eff. May 24, 1971.]

Sections 2 and 3 of the 1971 act provided:

"Sec. 2. As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes.

"Sec. 3. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed as to the extent of such conflict only."

**Art. 3902f-7. Counties of 22,720 to 23,300; Compensation of Deputies, Assistants or Clerks**

In any county having a population of not less than 22,720 nor more than 23,300 according to the last preceding federal census, the commissioners court may set the salary of any deputy, assistant, or clerk of any district, county, or precinct officer at not more than \$8,500 per year.

[Acts 1971, 62nd Leg., p. 1323, ch. 349, § 1, eff. May 24, 1971.]

Section 2 of the 1971 act provided: "As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3902g. Deputy Sheriffs in Counties Over 48,000**

It is hereby provided that in counties having a population of more than 48,000 as shown by the last preceding Federal Census, and containing a city of more than 15,000 population as shown by the last preceding Federal Census, located in a justice precinct other than that in which is located the county site in such county, the sheriff of such county may appoint as many deputies as the Commissioners' Court of such county may deem necessary.

[Acts 1935, 44th Leg., p. 53, ch. 17, § 1.]

**Art. 3902h. Deputy Assessor-Collector of Taxes in Counties of 140,000 to 220,000**

In all counties in this state having a population of not less than one hundred forty thousand (140,000) nor more than two hundred twenty thousand (220,000), according to the last preceding Federal Census or any future Federal Census, the Commissioners Court may employ one deputy Assessor-Collector of Taxes in each of such counties who shall receive a salary not to exceed Thirty-six Hundred (\$3,600.00) Dollars per annum, payable in equal monthly installments; provided however, that said deputy Assessor-Collector of Taxes shall possess special technical training, skill and experience as to valuations of oil and mineral bearing lands, properties and interests therein, industrial and refining plants, synthetic rubber plants, wharfs, docks and other transportation facilities, shipyards and other properties where special technical skill and

training are required. The Commissioners Court in such counties may contract with such deputy who shall work under the Assessor-Collector of Taxes, but such contract shall be terminable at the will of either party. To be valid any such contract of employment shall be in writing, shall be signed by the parties thereto, and shall be approved as to substance and form by the County Auditor and by the County Attorney. It is further provided that the Commissioners Court in any such counties, by order duly entered, shall be empowered to immediately terminate any such contract of employment as is provided for by this Section.

[Acts 1943, 48th Leg., p. 382, ch. 257, § 3.]

**Art. 3902h-1. Deputy Assessor-Collector of Taxes in Counties with Assessed Valuation of \$20,000,000 to \$25,000,000**

Sec. 1. In all counties in this State having an assessed property valuation of not less than Twenty Million Dollars (\$20,000,000) and not more than Twenty-five Million Dollars (\$25,000,000) on the ad valorem tax rolls of said counties approved as provided by law for the year 1946, it shall be the duty of the Commissioners Court in said counties at the first regular meeting following the effective date of this Act to determine the advisability of increasing the compensation of the First Assistant or Chief Deputy to the Tax Assessor-Collector of said county. If deemed necessary, expedient or advisable, said Commissioners Court, by order effective thirty (30) days after the passage thereof, may fix the salaries or compensation of said First Assistant or Chief Deputy Tax Assessor-Collector in and for said counties at not less than the present minimum provided by law, and not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable as present salaries of said officers are now paid, in equal monthly installments.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed, with the exception that said repeal shall apply only to the counties designated by this Act, and only as to the officers affected.

[Acts 1947, 50th Leg., p. 377, ch. 211.]

**Art. 3902h-2. Chief Deputy Assessor and Collector in Counties Over 150,000**

Sec. 1. The assessor and collector of taxes in each county of this State having a population of one hundred and fifty thousand (150,000) inhabitants or more is authorized to appoint two chief deputies to assist him in carrying out the duties of his office. One chief deputy shall be known as the chief deputy assessor and the other chief deputy shall be known as the chief deputy collector. Each chief deputy shall be entitled to the compensation provided by law for the chief deputy to the tax assessor and collector.

Sec. 2. This Act shall be cumulative of all other laws relating to the appointment of deputies for the tax assessor and collector in counties having a population of one hundred and

fifty thousand (150,000) inhabitants or more and the method of appointing such deputies shall be governed by existing laws.

[Acts 1955, 54th Leg., p. 518, ch. 154.]

**Art. 3902i. Counties of 35,000 to 40,000; First Assistant or Chief Deputy to County Clerk**

In all counties in this State having a population, according to the last preceding or any future Federal Census, of more than thirty-five thousand (35,000) persons and less than forty thousand (40,000) persons and an assessed property valuation, according to the latest approved tax rolls, of not less than Twenty Million Dollars (\$20,000,000) nor more than Thirty Million Dollars (\$30,000,000), the Commissioners Courts of such counties may fix the compensation of the First Assistant or Chief Deputy to the County Clerk of such county at an annual salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) to be paid in twelve (12) equal monthly installments. The salary of such officer from the effective date of this Act, for the remainder of the year 1949, shall be paid on the same ratio basis as the remainder of the year bears to the total annual salary provided herein.

[Acts 1949, 51st Leg., p. 426, ch. 227, § 1.]

**Art. 3902j. Deputies, Assistants and Clerks of County or Precinct Officers; Increase of Compensation**

Sec. 1. The Commissioners Court in each county of this State is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed thirty-five per cent (35%) of the maximum sum allowed under the law at the present time.

Sec. 2. The provisions of this Act shall be cumulative of all other laws pertaining to the compensation of deputies, assistants and clerks of any district, county or precinct officer.

[Acts 1951, 52nd Leg., p. 694, ch. 401; Acts 1957, 55th Leg., p. 364, ch. 169, § 1.]

**Art. 3903. Special Deputy District Clerk**

In counties of two hundred thousand inhabitants and over containing a city of over one hundred and sixty thousand inhabitants, and in which counties there are more than one district court, including criminal district courts, the clerk of the district courts shall appoint a special deputy for each court when directed so to do by the judge of any such court. Any such special deputy shall be paid out of the general fund of the county, a salary not in excess of the maximum salary per annum provided herein for deputies, payable monthly and such compensation shall not be paid out of the fees or compensation of the district clerk, and shall not be taken into consideration in arriving at

the maximum compensation and excess fees allowed the clerk of the district courts.

[Acts 1925, S.B. 84.]

**Art. 3903a. Special Deputy District Clerks in Counties Over 355,000**

That in counties of more than three hundred and fifty-five thousand (355,000) population according to the last preceding Federal Census, and in which counties there are more than one District Court, including Criminal District Courts, the Clerk of the District Court may appoint a special Deputy for each Court when directed so to do by the Judge of any such Court. Any such special Deputy shall be paid out of the General Funds of the county a salary to be fixed by the Commissioners' Court of said county not to exceed the maximum amount fixed by Article 3902 of the Revised Civil Statutes, as amended by the Acts of the Forty-third Legislature, for salaries of Deputies and/or heads of departments, other than the first assistant or chief Deputy.

[Acts 1934, 43rd Leg., 2nd C.S., p. 122, ch. 57, § 1.]

**Art. 3903b. Special Deputy in Counties of More Than 132,000 and Less Than 150,000 Salary**

In counties having a population of more than one hundred and thirty-two thousand (132,000), and less than one hundred and fifty thousand (150,000) inhabitants as shown by the latest United States Census, and in which counties there is more than one District Court, including a Criminal District Court, the Clerk of the District Court may appoint a special deputy for each Court when directed so to do by the Judge of any such Court. Any such special deputy shall receive a salary of One Hundred and Seventy-five Dollars (\$175) per month, to be paid out of the General Funds of the county and such compensation shall not be paid out of the fees or compensation of the District Clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the Clerk of the District Courts.

[Acts 1935, 44th Leg., p. 740, ch. 321, § 1.]

**Art. 3903c. Assistant to County Judge in Counties of 48,600 to 49,000; Salary**

Sec. 1. The County Judge in all counties in Texas having a population of not less than forty-eight thousand, six hundred (48,600) nor more than forty-nine thousand (49,000) according to the last preceding or any future Federal Census be empowered to appoint an Assistant.

Sec. 2. The salary of such Assistant shall be in an amount not to exceed Eighteen Hundred Dollars (\$1800) per annum and shall be subject to the consent and approval of the Commissioners Court of such counties.

[Acts 1939, 46th Leg., Spec.Laws, p. 750.]

**Art. 3903d. Assistant to County Judge in Certain Counties Over 90,000; Secretary in Lieu of Stenographer**

Sec. 1. In all counties in Texas of more than ninety thousand (90,000) population, ac-

ording to the last preceding Federal Census, and in which counties the last preceding assessed tax valuation was in excess of Ninety Million (\$90,000,000.00) Dollars, and in which counties there is no County Court-at-Law, the County Judge is empowered to appoint an Assistant. The salary of such Assistant shall be in an amount not to exceed Four Thousand Two Hundred (\$4,200.00) Dollars per annum and shall be subject to the consent and approval of the Commissioners Court of such counties.

Sec. 2. The County Judge in any such county may also appoint one Secretary in lieu of the stenographer which he may now appoint as provided by law. The salary of such Secretary shall be set by the Commissioners Court of such county at an amount not to exceed Two Thousand Seven Hundred (\$2,700.00) Dollars per annum, and such Secretary shall be removable at the will of the County Judge of such county.

[Acts 1947, 50th Leg., p. 775, ch. 384.]

**Art. 3903e. Seasonal Help for District Clerk; Counties of 30,400 to 31,150**

Sec. 1. In all counties in this State whose population exceeds thirty thousand, four hundred (30,400) inhabitants, and does not exceed thirty-one thousand, one hundred and fifty (31,150) inhabitants, according to the last preceding Federal Census, the district clerks of such counties shall be authorized to employ seasonal employees whose total compensation shall not exceed Five Hundred Dollars (\$500) per annum where such district clerks are not allowed regular full-time deputies by their respective Commissioners Court.

Sec. 2. The Commissioners Court of such county shall approve the employment of such seasonal employees and order their salaries paid out of the general funds of such counties upon written request of the district clerks to the Commissioners Court of such respective county.

Sec. 3. This Act is cumulative of all other Acts providing for the payment of salaries of deputies, assistants and employees in the offices of the district clerks of such counties, and nothing herein provided shall be construed as limiting or diminishing such compensation as is now fixed by law, but it is the intention of the Legislature that a minimum of Five Hundred Dollars (\$500) per year shall be allowed such district clerks for the purpose of enabling them to employ seasonal help during rush periods.

[Acts 1949, 51st Leg., p. 446, ch. 240.]

**Art. 3903f. Salaries of District Clerks in Counties of 145,000 to 150,000**

The Commissioners Court of any county having a population of more than 145,000 and less than 150,000 according to the last preceding federal census may pay the district clerk in that county an annual salary not to exceed \$12,000.

[Acts 1965, 59th Leg., p. 526, ch. 270, § 1; Acts 1971, 62nd Leg., p. 1846, ch. 542, § 117, eff. Sept. 1, 1971.]



**Art. 3904. No Fee Allowed**

No clerk or justice of the peace shall be entitled to any fee for the examination of any paper or record in his office, nor for filing any process or paper issued by him and returned into court, nor for motions or judgments upon motions for security for costs, nor for taking and approving a bond for costs. A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by said clerk or justice for entering or rendering the same.

[Acts 1925, S.B. 84.]

**Art. 3905. Fee for Acknowledgment**

Officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services.

[Acts 1925, S.B. 84.]

**Art. 3906. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3907. Fee Book**

Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered, which fee book shall, at all times be subject to the inspection of any person wishing to see the amount of fees therein charged.

[Acts 1925, S.B. 84.]

**Art. 3908. To Itemize Costs**

None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer.

[Acts 1925, S.B. 84.]

**Art. 3909. Extortion**

If any officer named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him.

[Acts 1925, S.B. 84.]

**Art. 3910. Fees Posted**

County judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties shall keep posted up, at all times, in a conspicuous place in the<sup>1</sup> respective offices a complete list of fees allowed by law to be charged by them respectively.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Probably should read "their."

**Art. 3911. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)****Art. 3912. Repealed by, Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10****Art. 3912a. County Judge as Budget Officer in Counties of 300,000 to 355,000; Compensation of Officers; Preparation**

Sec. 1. The County Judge of each county in which the population according to the last preceding Federal Census exceeds three hundred thousand (300,000) inhabitants and does not exceed three hundred fifty-five thousand (355,000) inhabitants, in his capacity as budget officer for the Commissioners Court in each county shall, during the month of November of each year, assisted by the County Auditor, prepare a budget to cover all proposed expenditures for the offices of the Sheriff, County Clerk, District Clerk, Tax Assessor, Tax Collector, and/or Tax Collector-Tax Assessor, Criminal District Attorney, Constables and Justices of the Peace for the year beginning the following January 1st. Such budget shall be carefully itemized and shall include the salaries and number of deputies and assistants in each of said offices, and all other expense necessary for the operation of said offices. Such budget shall provide for the amount to be paid for each office out of the fees of office and the amount to be appropriated out of the General Fund by the Commissioners Court, and such appropriations shall be within the discretion of the Commissioners Court. In the preparation of the budget for each of said offices the County Judge shall make such investigation as may be deemed necessary and shall also have authority to require any officer of the county and/or officer-elect of the county to furnish such information concerning his office as may be necessary in the preparation of such budget.

Sec. 2. Prior to the 15th day of December of each year the County Commissioners Court shall provide for a public hearing on the proposed budget, after notice in some paper of general circulation in the county. Any citizen of such county shall have the right to be present and participate in said hearing. Prior to the 20th day of December of each year the budget shall be acted upon by the Commissioners Court, and the Court in entering its order shall take into consideration any and all information obtained, and may make such changes in the proposed budget as it may deem advisable for the interests of the people. When the budget for the said offices has been finally approved by the Commissioners Court the order approving same, together with a copy of the budget, shall be filed with the Clerk of the County Court, and a certified copy thereof filed in the office of the State Comptroller. The expenditures of the officers shall be in strict conformity with the budget adopted by the Commissioners Court; provided and except, however, that the Commissioners Court is authorized to make, from time to time such amendments increasing or decreasing appropri-

ations provided for in such budget as are in the judgment of the Court necessary, and no additional expense and/or change in the expenditures may be made until after such expense and/or change has been authorized by the Court. In every case where the budget is amended by the Court the order amending same shall state fully the reasons and the necessity for such amendment; and a copy of same shall be filed with the Clerk of the County Court and attached to the budget originally adopted.

Sec. 3. The Commissioners Court in providing such budget is expressly authorized to fix the compensation for each deputy, assistant, and employee of said officers named in Section 1, regardless of the limitations and maximums now provided by any other law or laws, and to determine the number of the deputies, assistants, and employees of said officers named in Section 1, regardless of the number provided and/or required by any other law or laws.

Sec. 4. If any of the officers named in Section 1 hereof shall fail to comply with the provisions of this Act such officer shall be liable to a penalty of Twenty-five Dollars (\$25.00) for each day such officer fails to comply with each of the provisions hereof; and in case of such failure it shall be the duty of the Commissioners Court to bring suit to recover against such officer for such purpose.

Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed as applied to all counties coming within the provisions of this Act.

[Acts 1933, 43rd Leg., p. 107, ch. 54.]

**Art. 3912a-1. County Judge as Budget Officer in Counties of 7,050 to 7,075; Compensation**

The County Judge of each county containing a population of not less than seven thousand and fifty (7,050) and not more than seven thousand and seventy-five (7,075) inhabitants, according to the last preceding Federal Census, shall receive and be paid out of the General Fund of such counties the sum of Three Hundred Dollars (\$300) per annum, payable in equal monthly installments, as compensation for his services as budget officer in such counties and said compensation herein provided shall be in addition to all salaries and/or compensations now provided by law for County Judges to receive.

[Acts 1941, 47th Leg., p. 742, ch. 463, § 1.]

**Art. 3912b. Unconstitutional**

This article, Acts 1933, 43rd Leg., p. 128, ch. 60, § 1, reducing salaries of officers in counties of over 290,000 and less than 310,000 was held unreasonable and arbitrary in its classification and void as a special law, where it applied only to Bexar County. See *Bexar County v. Tynan*, 128 T. 223, 97 S.W.2d 467, affirming Civ.App., 69 S.W.2d 193.

The Court of Civil Appeals in *Bexar County v. Tynan*, Civ.App., 69 S.W.2d 193, held that Acts 1933, 43rd Leg., p. 128, ch. 60, § 1, was repealed by an act enacted at the same session of the Legislature, namely, Acts 1933, 43rd Leg., p. 734, § 9, effective Jan. 1, 1934.

4 West's Tex.Stats. & Codes—12

**Art. 3912c. Compensation of County Judge in Counties of 195,000 to 200,000; Stenographer; Salary**

Sec. 1. That in all counties of the State which have a population of not less than one hundred and ninety-five thousand (195,000) and not more than two hundred thousand (200,000), according to the last preceding census of the United States, there shall be paid to the County Judge out of the General Funds of the county the sum of Three Hundred and Seventy-five Dollars (\$375.00) per month on the first day of each calendar month, which sum shall be accounted for as fees of office, and provided said compensation from all sources, including this, shall not exceed the maximum sum now or hereafter allowed by law.

Sec. 2. The Commissioners' Court of such county shall, on application to the County Judge, authorize the County Judge to employ a stenographer at a salary of from One Hundred Dollars (\$100.00) to One Hundred and Twenty-five Dollars (\$125.00) per month, and such extra help as the Commissioners' Court may deem advisable and necessary at a salary of not exceeding Thirty Dollars (\$30.00) per week, providing such extra help shall not be employed for more than one person for three (3) months in any one calendar year. The salary of such stenographer and such extra help shall be paid out of the General Funds of the county.

[Acts 1934, 43rd Leg., 3rd C.S., p. 36, ch. 20.]

**Art. 3912c-1. Compensation of County Judges in Counties of 141,000 to 152,000**

(a) The Commissioners Court of any county in this state which has, according to the last preceding Federal Census, more than 141,000 persons but less than 152,000 persons, may supplement the compensation of the county judge of such county. However, the total annual compensation paid or authorized to be paid from whatever source to the judge may not exceed \$14,000.

(b) The supplemental compensation authorized by this Section is in addition to all other compensation now paid or authorized to be paid to the judge.

[Acts 1965, 59th Leg., p. 227, ch. 98, § 1.]

**Art. 3912d. Compensation of Officers in Counties of 355,000 or Over**

Sec. 1. In all counties having a population of three hundred fifty-five thousand (355,000) inhabitants or more according to the last preceding or any future Federal Census, the County Judge, Sheriff, County Clerk, Criminal District Attorney, District Clerk, Assessor and Collector of Taxes, Justices of the Peace and Constables thereof, shall, subject to the conditions hereinafter set out, be entitled to draw and receive such annual compensation as is allowed them under the terms of Article 3883 of the Revised Civil Statutes, as amended by Section 1 of Chapter 220 of the Acts of the Forty-third Legislature, appearing at Page 734 of

said Acts, in monthly installments in all cases in which the earnings and/or collections are sufficient for the purpose, and such of the deputies, assistants, and employees of said officials as are now or may be compensated from fees of office shall also be authorized to receive such compensation as is now or may hereafter be provided for them by law in monthly installments provided the earnings and/or collections are sufficient for the purpose, and the payment of such compensation to such officials and their deputies, assistants, and employees is hereby authorized to be made in twelve monthly installments, the same to be as nearly equal as the circumstances will permit, the same to be paid as nearly as possible on the first day of each calendar month for services rendered during the preceding month. Provided that all of the expenses which said officials are now or may hereafter be authorized by law to incur and pay in any calendar year from the fees of their respective offices, in the operation of said offices, other than the compensation allowed to such officers by said Article 3883 as amended as aforesaid, and that allowed or to be allowed by law to the deputies, assistants, and other employees of said officers, shall first be paid from and out of the fees earned and collected in cash by such officer during the calendar year in which such expense was incurred, and the balance remaining, if any, of the fees earned and collected in such calendar year, after the payment of the expenses incurred in such calendar year (exclusive of the said compensation of such officers and their deputies, assistants, and employees), shall then be applied ratably to the payment of said then earned or proportionate monthly compensation of such officers, and their deputies, assistants, and other employees. Provided that whenever the balance of current fees is insufficient to pay such officers and their said deputies, assistants, and employees one-twelfth ( $\frac{1}{12}$ th) of the said compensation so authorized, or to be authorized, for them annually and due for services rendered during the preceding month, then the balance of such compensation for such services may be paid from such sums, if any, as such officers may then have on hand in cash, resulting from the collection of fees earned by their respective offices in previous years and not payable to the then, or any former, holders of said offices under the terms of Article 3892 of the Revised Civil Statutes, as amended by Section 4 of Chapter 20 of the Acts of the Forty-first Legislature, Fourth Called Session, appearing at Page 30 of the Acts of said Session under the terms and conditions hereinafter set out.

Sec. 2. Nothing contained in this Act shall authorize the use of fees earned in prior years and collected in the current year when current fees collected are available and sufficient for the payment (in installments as herein provided) of the Officer's primary compensation fixed by said Article 3883, his current expenses, and the authorized salaries of deputies for the current year payable from fees, and the

right to use delinquent fees monthly for the purposes named herein shall in no wise alter the final application of such fees and their accounting as provided in Articles 3883, 3891, 3892, and 3902, all as amended by the Acts of the Forty-third Legislature, but each such officer shall, at the close of each calendar year, finally adjust and settle his accounts with the County as provided by the said articles last above referred to, it being the intention of this Act that the provision for the use of delinquent fees is intended to facilitate and expedite payment of salaries and expenses without repealing the provisions of the named statutes with respect to the use of current and/or delinquent fees collected during the calendar year.

Sec. 3. Subject to the terms and provisions hereinbefore set out, when, in any county subject to the terms and provisions of this Act, any of the officers hereinbefore mentioned and/or their predecessors in office, and/or the said deputies, assistants, or employees of such officers and those of their predecessors in office, are or shall be entitled to any wages, salaries, or compensation for services heretofore rendered, or hereafter to be rendered, which wages, salaries, or compensation have not been paid, and which are or may become due under the terms of this or any former or other law, and which said wages, salaries, or compensation are or may be represented by, or payable in whole or in part, from any warrants issued by the State Comptroller for fees and remaining unpaid by the State for a period of not less than thirty days, any of said officers in office may apply to the Commissioners' Court of his County in writing for authority to sell, at the market price prevailing therefor, so many of such warrants as shall be necessary to meet and defray such unpaid wages, salaries, or compensation, setting up in his application the amount thereof unpaid; provided that such Court shall hear such application within five (5) days from the date of the filing thereof, and at such hearing shall enter its order granting the application, if the facts are found to be as alleged and the application conforms to the requirements of this Act, and shall in such order find and declare the true market price prevailing for such warrants, whereupon such officer may sell such warrants at a price not less than that fixed in the order relating thereto, and the proceeds arising from such sale shall be deposited and accounted for as fees of office as provided by law, and said officer shall be authorized to pay off and discharge said unpaid wages, salaries, and compensation in the manner provided by law; provided further that the difference between the sale price and the face value of any warrant so sold shall never be chargeable against any such officer in any settlement with his County.

Sec. 4. The Commissioners' Courts of such counties are authorized to purchase such warrants from any such officers and to pay therefor, from any available county funds, the market price prevailing as determined by the Court, and such officer, upon receiving from

such county an amount equivalent to such market value of such warrants is authorized to indorse over and deliver such warrants to such county, provided that whenever such warrants become redeemable in cash and such county shall obtain from the State the proceeds of such redemption, such proceeds shall be paid into and shall become a part of the general fund of such county.

Sec. 5. Nothing herein contained shall be construed as repealing, or affecting the provisions of, Article 3892 of the Revised Civil Statutes of 1925, as amended by the Acts of the Forty-first Legislature, and otherwise known as Section 4 of Chapter 20 of the Acts of the Fourth Called Session of said Legislature, appearing at page 30 of said Acts, nor as increasing or diminishing the salaries now authorized by law to be paid to any such officer, his deputies, assistants, and employees, nor as repealing, altering or affecting any of the provisions of Chapter 98 of the Acts of the Regular Session of the Forty-third Legislature, otherwise known as House Bill No. 875.<sup>1</sup>

Sec. 6. The invalidity of any part or portion of this Act shall be without effect upon or prejudice to the other and remaining portions thereof, which shall, nevertheless, be and remain valid, operative, and in full force and effect.

Acts 1935, 44th Leg., p. 100, ch. 34.]

<sup>1</sup> Articles 1656a, 1656b.

#### Art. 3912e. Method of Compensation of District and Certain Designated County and Precinct Officers

##### Payment of Fees or Commissions

Sec. 1. No district officer shall be paid by the State of Texas any fees or commissions for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such moneys received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act, to account for fees, commissions and costs collected from private parties; provided further, that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of

rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee.

##### Determination by Commissioners' Court as to Precinct Officers and Officers in Counties of Less Than 20,000

Sec. 2. The Commissioners' Court of each county in the State of Texas, at its first regular meeting in January of each calendar year, shall, by order made and entered in the minutes of said court, determine whether precinct officers of such county (except public weighers and registrars of vital statistics) shall be compensated on a salary basis as provided for in this Act, or whether they shall receive as their compensation, such fees of office as may be earned by them in the performance of the duties of their offices, and it shall be the duty of the county clerk of each county to forward to the Comptroller of Public Accounts of the State of Texas on or before the 31st day of January a certified copy of such order. In counties having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, it shall likewise be the duty of the Commissioners' Court, by its order duly made and entered of record at its first regular meeting in January of each calendar year, to determine whether county officers of such county (excluding county surveyors, registrars of vital statistics and notaries public) shall be compensated for the fiscal year on the basis of an annual salary or whether they shall be compensated on the basis of fees earned by them in the performance of their official duties, and it shall also be the duty of the county clerk to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st day of January, a certified copy of said order of said Commissioners' Court.

##### Additional Fees of Precinct Officers

Sec. 2a. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, wherein the precinct officers are compensated on a salary basis under the provisions of this Act, such precinct officers shall receive, in addition to the salary fixed by the Commissioners Court, all fees, commissions, or payments for performing marriage ceremonies and for acting as registrar for the Board of Vital Statistics, and for acting as ex-officio notary public.

##### Payment of Salaries in Lieu of Fees

Sec. 3. In all cases where the Commissioners Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all

other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such moneys received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State but all costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties, providing further that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee.

**Officers' Salary Fund in Counties of Less Than  
190,000**

Sec. 4. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census wherein the county or precinct officers are compensated on a salary basis under the provisions of this Act, there shall be created a fund to be known as the "Officers' Salary Fund of \_\_\_\_\_ County, Texas." Such fund shall be kept separate and apart from all other county funds, and shall be held and disbursed for the purpose of paying the salaries of officers and the salaries of deputies, assistants and clerks of officers who are drawing a salary from said fund under the provisions of this Act, and to pay the authorized expenses of their offices. Such fund shall be deposited in the county depository and shall be protected to the same extent as other county funds. The Commissioners Court of the county, at its first regular meeting in January of each year, may determine by order made and entered in the minutes of the court that all fees, costs, compensation, salaries, expenses, and other funds which would otherwise be deposited in the Officers' Salary Fund shall be paid into and drawn from the general fund of the county. In a county where the Commissioners Court has entered an order to that effect, any reference in this Act to a salary fund shall be construed to mean the general fund of the county.

**Fees Collected Deposited in Officers' Salary Fund**

Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and

when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer.

**Apportionment of Appropriations**

Sec. 6. (a) In counties wherein the county officials are on a salary basis, in addition to the monies deposited in said Officers' Salary Fund or funds under the provisions of Sections 1, 3 and 5 of this Act there shall be deposited therein quarterly on the first day of January, April, July and October of each year, such sums as may be apportioned to such county under the provisions of this Act, out of the available appropriations made by the Legislature for such purposes, provided, however, that in counties wherein the Commissioners' Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners' Court that the county officers of such county shall be compensated on a salary basis for the fiscal year, and in that case the first quarterly payment of such apportionment shall be made in fifteen (15) days after the receipt of such notice by the Comptroller, and the remaining payments on the dates hereinabove prescribed. It shall be the duty of the Comptroller of Public Accounts to annually apportion to all counties in which the county officers are to be compensated on the basis of a salary any monies, appropriated for said year for such apportionment; each county entitled to participate in such apportionment shall receive for the benefit of its Officers' Salary Fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each county according to the last preceding Federal Census; provided that the annual apportionment for such purposes shall not exceed fourteen (14¢) cents per capita of said population of each county where county officers are compensated on a salary basis under the provisions of this Act. Provided that in all counties which had a population of less than sixty thousand (60,000) inhabitants in 1930 ac-

ording to the last preceding Federal Census and which now have ad valorem valuations for all purposes according to the last approved tax roll of such county, which have increased at least fifty (50) per cent over the valuation for 1930, the amount to be paid to each of said counties for its salary fund shall be the sum not to exceed twenty-five (25¢) cents per capita based on the 1930 population. The quarterly payment of such apportionment of such appropriation shall be made on warrants drawn by the State Comptroller upon the State Treasury payable to the county treasurer of the county in whose favor the apportionment is made and said warrants shall be registered by the Comptroller and the Treasurer and shall be mailed by the Comptroller to the Treasurer of the county.

(b) No officer receiving a salary shall hereafter receive any ex officio compensation; provided, however, the Commissioners' Court shall transfer from the General Fund of the county to the Officers' Salary Fund or funds of such county such funds as may be necessary to pay the salaries and other claims chargeable against the same when the monies deposited therein are insufficient to meet the claims payable therefrom.

(c) Any monies remaining in the Officers' Salary Fund or funds of any county at the end of any fiscal year after all salaries and authorized expenses incurred against said fund for said year shall have been paid may be, by order of the Commissioners' Court, transferred to the credit of the General Fund of the county.

#### Warrants on Officers' Salary Fund

Sec. 7. All monies drawn from said Officers' Salary Fund or funds shall be paid out only on warrants approved by the county auditor in counties having a county auditor; otherwise all claims against said fund shall first have been audited and approved by the Commissioners' Court of said county and the monies shall be disbursed on such approved claims by warrants drawn by the county treasurer on said fund.

No warrant shall be drawn on said fund or funds in favor of any person indebted to the State, county or to said fund or in favor of his agent or assignee until such debt is paid.

Secs. 8 to 12. [Amends arts. 3896 to 3899, 3901].

#### Commissioners' Court to Fix Salaries of Certain Officers; Increase

Sec. 13. The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk,

treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; and provided that in counties having a population of thirty-seven thousand five hundred (37,500) and less than sixty thousand (60,000) according to the last preceding Federal Census, and having an assessed valuation in excess of Twenty Million (\$20,000,000.00) Dollars, according to the last approved preceding tax roll of such county, the maximum amount allowed such officers as salaries, may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Twenty Million (\$20,000,000.00) Dollars valuation over and above the maximum amount allowed such officer under laws existing on August 24, 1935.

(a) The Commissioners Court may authorize the employment of a stenographer by the county judge and pay for such services out of the General Fund of the county to an amount not to exceed Fifteen Hundred Dollars (\$1500) per year.

(b) In those counties wherein the county officials are on a salary basis and in which counties there is a criminal district attorney or a county attorney performing the duties of a district attorney, there shall be deposited in the officers salary fund on the first day of September, January and May of each year, such sums as may be apportioned to such county under the provisions of this Act out of the available appropriations, made by the Legislature for such purposes; provided, however, that in counties wherein the Commissioners Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners Court that the county officers of such county shall be compensated on a salary basis for the fiscal year. It shall be the duty of the Comptroller of Public Accounts to annually apportion to such coun-

ties any monies appropriated for said year for such apportionment; each such county entitled to participate in such apportionment shall receive for the benefit of its officers salary fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each such county according to the last preceding Federal Census; provided the annual apportionment for such purposes shall be determined as follows: the apportionment shall not exceed Ten Cents (10¢) per capita of said population in those counties under eighty five hundred (8500) inhabitants; the apportionment shall not exceed Seven and One-half Cents (7½¢) per capita of said population in those counties having a population of not less than eighty five hundred (8500) and not more than nineteen thousand (19,000) inhabitants; the apportionment shall not exceed Five Cents (5¢) per capita of said population in those counties having a population of not less than nineteen thousand and one (19,001) and not more than seventy five thousand (75,000) inhabitants and the apportionment shall not exceed Four Cents (4¢) per capita in those counties having a population of over seventy five thousand (75,000) inhabitants. Provided the provisions of this Act shall also apply to Harris County for the constitutional office of the District Attorney for the Criminal District Court of Harris County at not to exceed Four Cents (4¢) per capita.

(c) The Commissioners Courts of the respective counties of Texas having a population of more than forty-six thousand, one hundred (46,100) and less than forty-six thousand, two hundred (46,200), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of their particular county at any sum not less than Fifty Dollars (\$50) per month. In the determination of such salary the Court will consider the fees received by such office during the preceding fiscal year, the expenses of that office during the same period, and the relative duties incumbent on such officer; and shall in their discretion affix to such office such compensation as they deem just and necessary for the services rendered, within the limits hereinbefore provided.

(d) The Commissioners Courts of the respective counties of Texas having a population of more than ninety thousand (90,000), and less than one hundred and twelve thousand (112,000), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of the particular county at a sum not less than Six Hundred Dollars (\$600) per year, nor more than Thirty-six Hundred Dollars (\$3600) per year.

(e) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred (\$3600.00) Dollars.

Sec. 14. [Amends art. 3902].

Commissioners' Court to Fix Salaries of County and Precinct Officers in Counties of Less Than 20,000; Increase

Sec. 15. The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by said officer in his said official capacity for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24th, 1935, and not more than the maximum amount allowed such officer under laws existing August 24, 1935<sup>1</sup>; provided, that in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census, and having an assessed valuation in excess of Ten Million (\$10,000,000.00) Dollars according to the last preceding approved tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation, or fractional part thereof, in excess of said Ten Million (\$10,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; provided however, no salaries covered by this Section shall exceed the sum of Four Thousand Five Hundred (\$4,500.00) Dollars regardless of the percentage of increase in population and valuation and provided further that in all counties having a population of not less than twenty thousand and one (20,001) and not more than twenty-five thousand (25,000), according to the last preceding Federal Census, and which has an assessed valuation in excess of Twenty-five Million (\$25,000,000.00) Dollars according to the last preceding approved tax roll of such counties, the county judge, sheriff, county attorney, assessor and collector of taxes, county clerk and district clerk, the maxi-

imum salary is hereby fixed at Three Thousand Seven Hundred and Fifty (\$3,750.00) Dollars.

(a) Repealed. Acts 1963, 58th Leg., p. 586, ch. 210, § 2.

(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred (\$3600.00) Dollars.

<sup>1</sup> Duplication of words "and not more than the maximum allowed such officer under laws existing August 24, 1935" appears in enrolled bill.

#### County Judge's Salary in Counties of 24,500 to 24,700

Sec. 15a. Provided further that in all counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700), according to the last preceding Federal Census, and which have an assessed valuation of not less than Twenty Million Dollars (\$20,000,000), according to the last preceding approved tax rolls in such counties, the county judge's salary is hereby fixed at Three Thousand, Four Hundred and Twenty Dollars (\$3,420).

#### Fees Continued Until Otherwise Determined in Counties Between 15,140 and 15,160 Population; Additional Allowance

Sec. 16. In counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census, all county officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise, in accordance with the provisions of Section 2 of this Act. Provided that in counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census heads of departments may be allowed by the Commissioners' Court, when such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the regular salary when such heads of departments so to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years.

#### Precinct Officers' Fees Continued, Salary Basis

Sec. 17. (a) The term "Precinct Officers" as used in this Act means justices of the peace and constables.

In all counties in this State such precinct officers shall continue to be compensated for their services on a fee basis until the Commis-

sioners' Court shall have determined otherwise in accordance with the provisions of Section 2 of this Act.

In counties wherein the Commissioners' Court shall have determined that precinct officers shall be compensated on an annual salary basis, but wherein they have determined that county officers shall not be so compensated, the Officers' Salary Fund of said county shall be composed and made up of fees, commissions and other compensation collected by the precinct officers of such county and deposited in said fund, and such funds as may be transferred to said fund by the Commissioners' Court of the county.

(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount, plus twenty-five per cent (25%) thereof, allowed such officer under laws existing August 24, 1935.

In counties in which precinct officers are paid in salary as compensation for their services, such officers desiring to appoint one or more deputies or assistants shall make application to the Commissioners Court for authority to appoint such deputy or deputies, in the manner and form prescribed for applications for deputy county officers by Article 3902, Revised Civil Statutes 1925, as amended within the provisions of this Act; the Commissioners Court shall not authorize the appointment of any deputy constable at a salary exceeding Fifteen Hundred Dollars (\$1500) per year. The salaries of deputies authorized to be appointed under the provisions of this Section shall be paid out of the Officers' Salary Fund.

In counties wherein the county officers named in this Act are compensated on the basis of an annual salary, the State of Texas shall not be charged with, and shall not pay any fee or commission to any precinct officer for any services by him performed, but said officer shall be paid by the County out of the Officers' Salary Fund such fees and commissions as would otherwise be paid him by the State for such services.

(b) 1. Provided however the provisions of this Act shall not apply to Counties having a population of over one hundred and fifty thousand (150,000) inhabitants according to the last preceding Federal or Special Census.

(b) 2. Provided however that no provision of this Act shall apply to Counties having a population of less than seventy-five thousand (75,000) according to the last Federal or Special Census.

#### Salary of Criminal District Attorney

Sec. 18. (a) Each criminal district attorney in this State serving a district comprising



two or more counties, the population of which district exceeds one hundred and fifty thousand (150,000) inhabitants, according to the last preceding Federal Census, shall receive an annual salary of Four Thousand Five Hundred (\$4,500.00) Dollars, to be paid in twelve (12) equal monthly installments, upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury; provided nothing in this Section shall be construed as repealing any existing laws providing for assistants for said criminal district attorney.

(b) Such criminal district attorneys shall be allowed a sum not to exceed Five Hundred (\$500.00) Dollars per annum for the necessary expenses of such office, said sum to be paid only upon the itemized sworn statement of such officer showing the necessity therefor and approved by the state auditor.

Provision Applicable to Counties in Excess of  
190,000

Sec. 19. Provisions of this Section shall apply to and control in each county in the State of Texas having a population in excess of one hundred and ninety (190,000) thousand inhabitants, according to the last preceding Federal Census.

(a) The Commissioners' Court of each such county, at its first regular meeting in January of each calendar year, shall determine by order made and entered in the minutes of said court, whether the precinct officers of such county shall be compensated on a salary basis as provided for in this Section, or whether they shall receive as their compensation such fees of office as may be earned and collected by them in the performance of the duties of their offices, subject to the limitations hereinafter provided; and it shall be the duty of the county clerk of each such county to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st day of January, a certified copy of such order.

(b) Where the Commissioners' Court shall have determined that precinct officers in such county shall be compensated for their services by the payment of an annual salary, such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided that the provisions of this subsection shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Section to account for fees, commissions, and costs collected from private parties.

(c) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Such Precinct Officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall

have determined otherwise in accordance with the provisions of this section.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand (\$4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such Precinct Officers may retain not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each.

All fees and commissions earned by such official shall be applied first to the payment of his Deputies, authorized expenses of his office, and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the Officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this section, shall be compensated after an order duly enacted by the Commissioners' Court as herein provided, on an annual salary basis from said Officer's Salary Fund; such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand (\$4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each; provided further that in such counties in which the Commissioners' Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners' Court shall not be required to place said salaries in all precincts within the county at equal amounts, but said Commissioners' Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners' Court determine to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto

all fees, commissions, or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public.

(d) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of taxes shall receive a salary of Six Thousand, Five Hundred (\$6,500.00) Dollars per annum from the Officer's Salary Fund herein provided for; provided that in counties having a population of more than 355,000 inhabitants, according to the last preceding or any future Federal Census, the said officers shall receive a salary of Seven Thousand, Four Hundred (\$7,400.00) Dollars per annum from the said Officer's Salary Fund. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property. The County Commissioners in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, shall each receive a salary of Four Thousand, Eight Hundred (\$4,800.00) Dollars per annum, and said salaries shall be paid in equal monthly installments, three-fourths ( $\frac{3}{4}$ ) out of the Road and Bridge Fund and one-fourth ( $\frac{1}{4}$ ) out of the General Fund of the county. The Judge of the County Court at Law of Harris County, Texas and the Judge of the County Court at Law No. 2 of Harris County, Texas each shall receive a salary of Six Thousand (\$6,000.00) Dollars per annum to be paid out of the County Treasury by the Commissioners' Court in equal monthly installments.

(e) The Commissioners' Court of each county shall determine annually the salary to be paid to the County Treasurer at a reasonable sum not to exceed Three Thousand, Six Hundred (\$3,600.00) Dollars per annum; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, the salary to be paid to the County Treasurer shall not exceed Three Thousand, Nine Hundred (\$3,900.00) Dollars per annum. Said Treasurer shall be allowed to appoint one Assistant at a reasonable salary not to exceed One Thousand, Eight Hundred (\$1,800.00) Dollars per annum; and said Court may allow one additional Assistant upon adequate proof of necessity at a reasonable salary not to exceed One Thousand, Five Hundred (\$1,500.00) Dollars per annum. Said Assistants shall be appointed by the Treasurer and shall take the usual oath of office and, in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners' Court. Said As-

sistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. The County Treasurer may designate, subject to the approval of the Commissioners' Court, a named person to act for him and in his stead when he shall be absent, unavoidably detained or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners' Court and such Court may require any proof in connection therewith desired. Upon approval of the Court of the appointment of the person so designated, and the recording of such appointment in the minutes of the Court, thereupon such person may act for such Treasurer during such period of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given a surety bond in favor of the county and the County Treasurer as their interests may appear and in such amounts as the Commissioners' Court may require.

(f) The district attorney or criminal district attorney shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars (\$4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars (\$4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) of said assistants, Three Thousand Dollars (\$3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each. He may employ two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred and Eighty Dollars (\$2,280) per annum each. He may employ one (1) combination stenographer and accountant and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ two (2) abstracters and fix their salaries as follows: one (1) of said abstracters at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. All such salaries above mentioned shall be payable from the Officers Salary Fund, if adequate. If inadequate, the

Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund.

In all counties in this State containing a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last preceding Federal Census, the district attorney or criminal district attorney shall be authorized to employ two (2) court reporters and fix their salaries as follows: one (1) of said court reporters at a salary not to exceed Three Thousand Dollars (\$3,000) per annum, and one (1) of said court reporters at a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum.

Should a district or criminal district attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: one (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred and Fifty Dollars (\$4,250) per annum; one (1) additional assistant or employee to receive a salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars (\$3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred and Sixty Dollars (\$2,160) per annum. He may employ one (1) stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars (\$900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund. In addition to the salary herein provided for investigators for dis-

trict attorneys and criminal district attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars (\$50) per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowances to be paid monthly by such county by warrant drawn upon said Officers Salary Fund upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the district attorney before being paid.

(f-1) The District Attorney or Criminal District Attorney in any county having a population of not less than three hundred twenty-five thousand (325,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, shall be authorized to appoint fourteen (14) assistants and fix their salaries at a rate not to exceed the following amount: Two (2) of said assistants, Five Thousand One Hundred Seventy-five (\$5,175.00) Dollars per annum each; one (1) of said assistants, Four Thousand Eight Hundred Eighty Seven (\$4,887.00) Dollars per annum; two (2) of said assistants, Four Thousand Eight Hundred Thirty (\$4,830.00) Dollars per annum each; two (2) of said assistants, Four Thousand One Hundred Forty (\$4,140.00) Dollars per annum each; two (2) of said assistants, Three Thousand Four Hundred Fifty (\$3,450.00) Dollars per annum each; and five (5) of said assistants, Three Thousand One Hundred Five (\$3,105.00) Dollars per annum each. He may employ one additional assistant or employee at a salary not to exceed Two Thousand Seven Hundred Sixty (\$2,760.00) Dollars per annum. He may employ two (2) Court Reporters and fix their salaries as follows: one (1) of said Court Reporters at a salary not to exceed Four Thousand One Hundred Forty (\$4,140.00) Dollars per annum, and one (1) of said Court Reporters at a salary not to exceed Three Thousand Four Hundred Fifty (\$3,450.00) Dollars per annum. He may employ three (3) investigators and fix their salaries not to exceed Two Thousand Seven Hundred Sixty (\$2,760.00) Dollars per annum each. He may employ one (1) chief civil clerk and fix the salary not to exceed Two Thousand Four Hundred Fifteen (\$2,415.00) Dollars per annum. He may employ one (1) combination stenographer and accountant and fix the salary not to exceed Two Thousand Four Hundred Fifteen (\$2,415.00) Dollars per annum. He may employ two (2) abstractors and fix their salaries not to exceed Two Thousand Four Hundred Fifteen (\$2,415.00) Dollars per annum each. He may employ two (2) stenographers and fix their salaries not to exceed Two Thousand Seventy (\$2,070.00) Dollars per annum each. He

may employ one (1) stenographer at a salary not to exceed One Thousand Seven Hundred Twenty-five (\$1,725.00) Dollars per annum. He may employ one (1) information clerk at a salary not to exceed One Thousand Seven Hundred Twenty-five (\$1,725.00) Dollars per annum. All of such salaries above mentioned shall be payable from the Officers' Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer necessary funds from the General Fund of the County to the Officers' Salary Fund. In addition to the salaries herein provided for investigators for District Attorneys and Criminal District Attorneys, each of such investigators shall be allowed a sum not to exceed Fifty (\$50.00) Dollars per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowance to be paid monthly by such county by warrant drawn upon said Officers' Salary Fund upon the written claim of such investigator, showing that said automobile was in official use; and such claim shall bear the approval of the District Attorney or Criminal District Attorney before being paid.

Should a District Attorney or Criminal District Attorney in any county having a population of not less than three hundred twenty-five thousand (325,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for is not adequate for the proper investigation and prosecution of crime and the efficient performance of the duties of his office, with the advice and approval of the Commissioners Court he may appoint such additional assistants or employees as the Commissioners Court may allow and fix their salaries in such amounts as the Commissioners Court may provide. All such salaries may be paid either from the Jury Fund or from the Officers' Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to such Officers' Salary Funds.

(g) In addition to other sums provided in this section, the district attorney or criminal district attorney may be allowed by order of the Commissioners' Court of his county such amount as said court may deem necessary to pay for, or aid in, the proper administration of the duties of such office, not to exceed Two Thousand Five Hundred (\$2,500.00) Dollars in any one calendar year; provided, that such amounts as may be allowed shall be allowed upon written application of such district attorney or criminal district attorney showing the necessity therefor, and provided further that said Commissioners'

Court may require any other evidence that it may deem necessary to show the necessity for any such expenditures, and that its judgment in allowing or refusing to allow the same shall be final. No payment therefor shall be made except upon an itemized sworn statement of such expenses filed in the manner provided in this section for other expenses.

(h) Whenever any district or county officer, or precinct officer when such officer is compensated on a salary basis, with the exception of district attorneys and criminal district attorneys, shall require the services of deputies, assistants, and employees in the performance of his duties he shall apply to the Commissioners' Court for authority to appoint such deputies, assistants, and employees, stating by sworn application the number needed, the position to be filled, the duties to be performed, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants, and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant, or clerk in any office. Upon the entry of such order the officers applying for such deputies, assistants, and employees shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The maximum compensation which may be allowed to the deputies, assistants, or clerks above named for their services shall be as follows:

First Assistant or Chief Deputy not to exceed Three Thousand Six Hundred (\$3,600.00) Dollars per annum; one assistant or deputy not to exceed Three Thousand (\$3,000.00) Dollars per annum; other assistants, deputies, and employees not to exceed Two Thousand Four Hundred (\$2,400.00) Dollars per annum each; provided that bailiffs serving criminal district courts shall be paid not less than One Hundred and Seventy-five (\$175.00) Dollars per month each; provided further that chief clerks or chief deputies in county and district offices shall receive not less than Three Thousand (\$3,000.00) Dollars per annum each and heads of departments in county or district of-

fices shall receive not less than Twenty-five Hundred (\$2,500.00) Dollars per annum each. No payment shall be made to any deputy, assistant or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the constitutional oath of office and such appointment and oath have been filed with the county clerk for record. The amounts allowed to be paid to deputies, assistants and employees shall be paid after rendition of service out of said Officers' Salary Fund as provided for in this Act.

Provided, that in counties having a population of three hundred and fifty-five thousand (355,000) or more, according to the last preceding Federal Census, whenever any district or county officer, or precinct officer when such precinct officer is compensated on a salary basis, with the exception of district attorneys and criminal district attorneys, shall require the services of deputies, assistants, and employees, in the performance of his duties, he shall apply in writing to the Commissioners Court of his county for authority to appoint such deputies, assistants, and employees, such written application to be sworn to and to set forth the number needed, the positions to be filled, the duties to be performed, and the amount of compensation to be paid. Each such application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by the office of the officer so applying during the fiscal year and the probable disbursements to be made by such office during such fiscal year, which shall include all salaries and expenses of such office, and said Court shall make its order authorizing the appointment of such deputies, assistants, and employees, and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed, as in the discretion of said Court may seem proper; provided that in no case shall the Commissioners Court, or any member thereof, attempt to influence the appointment of any person as a deputy, assistant, or employee in any office. Upon the entry of such order the officer applying for such deputies, assistants, and employees, shall be authorized to appoint them, provided that the compensation to be paid them shall not exceed the maximum amount hereinafter set out. The maximum compensation which may be allowed to the deputies, assistants, and employees of the officers hereby affected for their services shall be as follows:

First Assistant or Chief Deputy not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum, one Assistant Chief Deputy not to exceed

Three Thousand Dollars (\$3,000) per annum; other assistants, deputies, and employees not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each; provided further that the First Assistant or Chief Deputy in county and district offices affected hereby shall receive not less than Three Thousand Dollars (\$3,000) per annum; provided further that heads of departments may each be allowed by the Commissioners Court, when necessary in the judgment of such Court, to receive respective salaries not to exceed the rate of Two Thousand, Five Hundred Dollars (\$2,500) per annum, when such heads of departments sought to be appointed shall have previously served the county or district by which they are employed for not less than two (2) continuous years, but no head of a department shall be created except where the person sought to be appointed is to be in actual charge of the department with deputies or assistants under his supervision, and such heads of departments shall only be appointed in offices capable of a bona fide subdivision into departments; provided further, that in all counties affected by this Act, having more than one District Court or Criminal District Court, the deputies or assistants of the District Clerk, who are regularly assigned to serve in such Courts as clerks, shall be considered as heads of departments within the meaning of this Act, and Sheriffs' deputies regularly assigned to and serving in such District Courts or Criminal District Courts, not to exceed one deputy to each such Court, shall be paid a salary of not less than Two Thousand, One Hundred Dollars (\$2,100) per annum each. No payment shall be made to any deputy, assistant, or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the Constitutional Oath of Office and such appointment and Oath have been filed with the County Clerk and County Auditor for record. The amounts allowed to be paid to deputies, assistants, and employees shall be paid only after rendition of service out of said Officers' Salary Fund or General Fund as provided for in this Act.

(h-1) [Blank]

(h-2) In any county of this State with a population of two hundred fifty thousand (250,000) inhabitants and over and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding Federal Census, the District Clerk may make written application to the District Judges of said county for

the appointment of assistants and/or deputies and the salaries to be paid same, setting forth the number of assistants and/or deputies sought to be appointed and the salary to be paid each, such salaries to be not more than allowed by law in Senate Bill 5, Acts of the Forty-fourth Legislature, Second Called Session, and amendments thereto. Said application shall be accompanied by a statement showing the probable receipts and disbursements of said office, and shall be presented to the District Judges, who shall then carefully consider same; and, if, after such consideration, a majority of the District Judges shall approve the appointments sought to be made, and shall also approve the salary to be paid each, they shall certify said list to the Commissioners' Court of said county; and said application and the order of the District Judges thereon shall be recorded in the minutes of the District Court.

The Commissioners' Court shall thereupon order the amount approved to be paid from the General Fund, officers' salary fund, or any other fund of the county, as herein provided, upon the performance of the services required, and said Commissioners' Court shall appropriate adequate funds for that purpose. All assistants to the District Clerk shall be paid from the General Fund of the county or the Officers' Salary Fund, as per the order of the Commissioners' Court, except as herein provided; and be it further provided that the Commissioners' Court may authorize that the court clerks, the index clerk, and the clerk handling the jury in each such county can be paid either from the General Fund or the Jury Fund of said county.

The deputies appointed by the District Clerk shall be authorized to discharge such duties as may be assigned to them by the District Clerk and provided for by law, and all of said assistants shall take the oath of office for faithful performance of duty. The District Clerk shall have the right to discontinue the services of any assistants employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. In like manner, the Judges of the District Court may authorize the appointment of additional assistants when, in the judgment of the District Clerk, a necessity exists therefor.

(h-3) In any county of this State with a population of two hundred and ninety thousand (290,000) inhabitants and over, and less than three hundred and ninety thousand (390,000) inhabitants, according to the last preceding Federal Census, the District Clerk may make written application to the Commissioners Court of said county, subject to the approval by the Court, for the appointment of assistants and/or deputies and the salaries to be paid

same, setting forth the number of assistants and/or deputies sought to be appointed and the salaries to be paid each, such salaries to be not more than allowed by law in Senate Bill 5, Acts of the Forty-fourth Legislature, Second Called Session,<sup>1</sup> and amendments thereto.

The Commissioners Court, upon approval of the application, shall thereupon order the amount approved to be paid from the General Fund, officers' salary fund, or any other fund of the county, as herein provided, and said Commissioners Court shall appropriate adequate funds for that purpose. Assistants to the District Clerk shall be paid from the General Fund of the county or the officers' salary fund, provided the Commissioners Court may authorize that the Court clerks, the index clerk, and the clerk handling the jury in each such county can be paid either from the General Fund or the Jury Fund of said county; and be it further provided that the per capita payments made by the State to the counties in lieu of felony fees formerly paid to the officers shall be apportioned by the County Auditor, as follows: after paying the fees to precinct officers rendering services in felony cases, pay to the District Clerk and the Sheriff the same amount each officer earned in felony fees during the year 1935, and the remaining balance shall be paid to the District Attorney or Criminal District Attorney, as the case may be.

The deputies appointed by the District Clerk shall be authorized to discharge such duties as may be assigned to them by the District Clerk and provided for by law, and all of said assistants shall take the oath of office for faithful performance of duty. The District Clerk shall have the right to discontinue the services of any assistants employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. In like manner, the Commissioners Court may authorize the appointment of additional assistants when, in the judgment of the District Clerk, a necessity exists therefor.

<sup>1</sup> Articles 3896 to 3899, 3901, 3902, 3912e.

(i) There shall be created a fund for each officer affected by the provisions hereof to be known as the "\_\_\_\_\_ Salary Fund of \_\_\_\_\_ County, Texas" (insert the title of the officer affected and the name of the county) and such fund shall be kept separate and apart from all other county funds and shall be held and disbursed for the purpose of paying the salary of such officer, the salaries of his deputies, assistants, clerks, stenographers, and investigators who are authorized to draw a salary from said fund under the provisions of this Section and to pay the authorized and approved expenses of his office. Such

fund shall be deposited in the county depository and shall be protected to the same extent, and draw the same interest, as other county funds. The Commissioners' Court of each county affected by the provisions of this Section, at its first regular meeting in January of each calendar year, may determine, by order made and entered in the minutes of said court, that all fees, costs, compensation, salaries, expenses, etc., provided for in this Section, shall be paid into and drawn from the general fund of such county; in which event each reference in this Section to a salary fund shall be read as and interpreted to be "General Fund".

(j) Each district, county, and precinct officer who shall be compensated on a salary basis shall continue to charge for the benefit of the Officers' Salary Fund of his office provided for in this Section, all fees and commissions which he is now or hereafter may be authorized to charge against and collect from the State of Texas for services performed by him in civil proceedings and to file claims for the fees or commissions due for such services in the manner now or hereafter provided by law; and it shall be the duty of said officer to account for and cause to be paid to the salary fund created for such officer all such commissions and fees when paid by the State in like manner as for costs collected from private parties; provided further, that such warrants issued by the State Comptroller of Public Accounts shall be made payable jointly to the officer in office at the date of payment and to the county treasurer, and that upon endorsement thereof such warrants shall be deposited forthwith by said county treasurer in the salary fund created for such officer.

(k) No officer receiving a salary shall receive any ex-officio compensation from the county; provided, however, the Commissioners' Court shall transfer from the general fund of the county to any Officers' Salary Fund of such county such funds as may be necessary to pay the salaries and other legally authorized claims chargeable against such fund when the moneys deposited to the credit of such fund are insufficient to meet the claims against it.

(l) Each district, county, and precinct officer receiving an annual salary as compensation shall be entitled, subject to the provisions of this Section, to issue warrants against the salary fund created for his office in payment of the services of deputies, assistants, clerks, stenographers, and investigators, for such amounts as said employees may be entitled to receive for services performed under their authorizations of employment. And such officer shall be entitled to file claims for and issue warrants in payment of all actual and necessary expenses incurred by him in the

conduct of his office, such as stationery, stamps, telephone, traveling expenses, premiums on deputies' bonds, and other necessary expenses. If such expenses be incurred in connection with any particular case, such claim shall state such case. All such claims shall be subject to the audit of the county auditor; and if it appears that any item of such expense was not incurred by such officer, or such item was not a necessary expense of office, or such claim is incorrect or unlawful, such item shall be by such auditor rejected, in which case the correctness, legality, or necessity of such item may be adjudicated in any Court of competent jurisdiction. Provided, the Assessor and Collector of Taxes shall be authorized in like manner annually to incur and pay for insurance premiums in a reasonable sum for policies to carry insurance against loss of funds by fire, burglary, or theft.

At the close of each month of the tenure of his office, each officer named herein shall make as a part of the report required by Subsection (o) of this Section an itemized and sworn statement of all expense claims paid during said month. And said report shall give the name, position, and amount paid to each authorized employee of such officer. Such deputies, assistants, clerks, or other employees as well as expenses shall be paid from the Officers' Salary Fund in cases in which the officer is on a salary basis, and from fees earned and collected by such officer in all cases in which the officer is compensated on a basis of fees earned by him.

The Commissioners Court may allow, upon the written and sworn application of the sheriff showing the necessity therefor, one or more automobiles to be used by the sheriff or his deputies in the discharge of his official duties, which, if purchased by the county, shall be bought in the manner prescribed by law for the purchase of supplies, and shall be paid for out of the Officers' Salary Fund, and said automobiles shall be and remain the property of the county. The expense of operating and maintaining said automobile shall be paid in the manner and subject to the provisions herein provided for other expense items. The Commissioners Court by an order entered of record may make provision for payment of depreciation upon automobiles owned personally by the sheriff or his deputies.

The Commissioners Court may, upon the written and sworn application of the District Attorney or Criminal District Attorney stating the necessity therefor, allow one or more automobiles to be used by him in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies and paid for

out of the Officers' Salary Fund, and they shall be and remain the property of the county. The amount to be expended for the purchase of an automobile or automobiles shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200) for the first year, and shall not exceed the sum of Five Hundred Dollars (\$500) for any year thereafter. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the District Attorney or the Criminal District Attorney from the Officers' Salary Fund, and the amount thereof shall be reported in detail by the District Attorney or the Criminal District Attorney on his monthly report, as is required by this Section in reporting expenses incurred by him in the conduct of his office. Such expense account for the maintenance and operation of such automobile or automobiles shall be subject to audit as hereinabove provided.

(m) All moneys drawn from said Officers' Salary Funds shall be paid out only on warrants approved by the county auditor. No warrants shall be drawn on said fund in favor of any person indebted to the State, county, or to said fund or in favor of his agent or assignee until such debt is paid, when notice of such indebtedness has been filed with the county auditor.

All moneys remaining in any Officers' Salary Fund of the county at the end of any fiscal year after all salaries and authorized expenses incurred against said fund for said year shall have been paid and the accounts of said officer have been audited and approved by the county auditor shall be by order of the Commissioners' Court transferred by warrant issued by the county clerk when approved to the credit of the general fund of the county.

(n) Each district, county and precinct officer shall keep a correct detailed statement of all amounts earned by him and of sums coming into his hands as fees, costs, and commissions, in a book to be provided for him by the proper authorities of the county for that purpose in which the officer at the time when fees or moneys are earned or shall come into his hands shall enter the same in such form as may be lawfully required.

(o) The fiscal year, within the meaning of this Section, shall begin on January 1st of each year; and each district, county, and precinct officer shall file his annual report and make the final settlement required in this Act by January 15th of each year; provided, however, that officers receiving an annual salary as compensation for their services shall on or before the fifth day of each month file with the county auditor on forms prescribed by him and as part of the report required by subsec-

tion l of this Section, a detailed and itemized report of all fees, commissions, and compensations collected by him during the preceding month, and shall forthwith pay into the Officers' Salary Fund for his office, all fees, commissions, and compensations collected by him during said month. Whenever such officer serves a fractional part of the fiscal year, he shall, nevertheless, file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time of his service bears to the entire year.

(p) It shall be the official duty of each clerk of the district and county courts and of all justices of the peace to require at the commencement of any civil suit adequate security for costs; provided a pauper's oath may be filed and contested as provided by law. No district, county or precinct officer shall under the penalties now provided by law waive any fees or costs but it shall be the duty of all officers to assess and collect all fees and commissions which they are permitted or directed by law to assess and collect for services performed by them. Where any officer receives a salary payable from the salary fund created for such officer all fees, commissions, and other compensation received by him in his official capacity shall be by him deposited and paid monthly, or oftener, into the salary fund created for such officer, and such remittance shall be accompanied by his official report thereof, as provided for in this Section.

(q) Each district, county, and precinct officer, at the close of each fiscal year (December 31st), shall make to the district court of such county a sworn statement in triplicate (on forms designed and approved by the State Auditor), a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within fifteen (15) days after the same has been filed in his office, and one (1) copy shall be filed with the county auditor. Said report shall show the amount of all fees, commissions, and compensations whatever earned by said officer during the fiscal year; and the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall contain an itemized statement of all fees, commissions, and compensations earned during the fiscal year which were not collected, together with the style of the case and number, the name of the party owing said fees, commissions, and compensations, the nature of the security for costs, and the reason for non-collection. Said report shall show the names of the deputies and assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said report shall be filed not later than Febru-



ary 1, following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The county auditor shall audit such report and file his report with the Commissioners Court, and said county auditor also shall prepare and file with the district or criminal district attorney a detailed report of all fees, commissions, and compensations uncollected which have been due and payable to any officer of the county for a period of more than six (6) months; and a similar report of all fees, commissions, and compensations collected by said officers and not reported by them and a list of cases filed since January 1, 1936, in which any county or district clerk or justice of the peace has not taken adequate security for costs or required a pauper's oath. It shall be the duty of the district or criminal district attorney to institute proceedings for the collection of such fees, commissions, and compensations, all of which are declared to be the property of the county and shall be deposited in the general fund.

**Repeal**

*The provisions of paragraph (q), section 19 of this article, insofar as applicable to counties whose officers were compensated on a salary basis, were repealed by Acts 1965, 59 Leg., p. 610, ch. 302, § 1.*

(r) The moneys received from the State by each such county under the provisions of Section 6 and subsection b of Section 13 of this Act shall be apportioned by the Commissioners' Court to the proper Officers' Salary Fund of each such county.

(s) Notaries Public, public weighers, and county surveyors are expressly exempted from the provisions of this Section.

(t) It is hereby declared to be the intention of the Legislature that the provisions of this Section control in all things as to the counties affected hereby. Nothing herein shall be held to repeal Chapter 122, Page 330, Acts of the 44th Legislature, 1935, Regular Session,<sup>1</sup> except insofar as its provisions may be in direct conflict herewith, in which event the terms of this Section shall prevail, nor shall anything herein contained affect or be construed as repealing Chapter 34, Acts of the 44th Legislature, Regular Session, appearing at Page 100, et sequente, of said Acts,<sup>2</sup> or Art. 3912a, Revised Civil Statutes of Texas, the same being Acts 1933, 43rd Legislature, Page 107, Chapter 54.

<sup>1</sup> Article 1256a.

<sup>2</sup> Article 3912d.

(u) The provisions of this Section shall be severable and if any subsection, sentence, clause, phrase, word or part of the same shall be held to be unconstitutional

or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Section. It is hereby declared to be the Legislative intent that this Section would have been adopted had such invalid provision not been included therein.

**Appropriation**

Sec. 20. Any unexpended balance in the appropriation made by the Regular Session of the 44th Legislature, for the payment of fees and costs of sheriffs, attorneys and clerks in felony cases, fees of county judges, county attorneys, justices of the peace, sheriffs and constables in examining trials actually held and where indictments are returned, in the sum of Five Hundred Fifty Thousand (\$550,000.00) Dollars for each of the fiscal years ending August 31, 1936, and August 31, 1937, in addition to the purposes therein specified, is hereby appropriated and authorized to be disbursed by the Comptroller and Treasurer in the payment of any apportionment which may become due to any counties in this State under the provisions of this Act for the fiscal year for which the appropriation is available.

**Effective Date**

Sec. 21. The provisions of this Act shall become effective January 1, A.D., 1936.

**Provisions Cumulative**

Sec. 22. The provisions of this Act shall be cumulative of all laws not in conflict herewith. It is hereby declared to be the intention of the Legislature that the compensation, limitations, and maximums fixed in this Act for the named officers, their deputies, assistants and employees control over any other provisions contained in all laws, general and special.

**Repeals**

Sec. 23. All general laws in conflict with the provisions of this Act, fixing or attempting to fix the compensation of officers enumerated herein, are hereby in all things repealed, except such general or special laws that do not have a statewide application. Special and local laws or general laws of local application which do not have a statewide application shall remain in full force and effect.

[Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465; Acts 1937, 45th Leg., p. 32, ch. 26, §§ 1 to 1-b; Acts 1937, 45th Leg., p. 351, ch. 171, § 1; Acts 1937, 45th Leg., p. 647, ch. 317, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1801, ch. 26, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1996, ch. 68, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 608, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 742, § 1; Acts 1939, 46th Leg., Spec.Laws, p. 744, § 1; Acts 1941, 47th Leg., p. 74, ch. 61, § 1; Acts 1941, 47th Leg., p. 240, ch. 169, § 1; Acts 1941, 47th Leg., p. 543, ch. 338, § 1; Acts 1941, 47th Leg., p. 1309, ch. 585, § 1; Acts 1945, 49th Leg., p. 244, ch. 179, §§ 3, 4; Acts 1945, 49th Leg., p. 626, ch. 356, § 1; Acts 1947, 50th Leg., p. 170, ch. 107, § 1; Acts 1949, 51st Leg., p. 90, ch. 54, § 1; Acts 1949, 51st Leg., p. 474, ch. 257, § 1; Acts 1955, 54th Leg., p. 598, ch. 205, § 1; Acts 1959, 56th Leg., p. 35, ch. 23, §§ 1, 2; Acts 1963, 58th Leg., p. 586, ch. 210, §§ 1, 2; Acts 1973, 63rd Leg., p. 1379, ch. 530, § 1, eff. June 14, 1973.]

### Repealer

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

*Acts 1971, 62nd Leg., p. 2019, ch. 622, providing for the setting of compensation, expenses and allowances for certain county and precinct officials and employees by the commissioners courts effective January 1, 1972, provides in section 8 thereof that to the extent any local, special, or general law, including Acts of the 1971 Legislature, prescribes such compensation, expenses and allowances for any official or employee covered by this Act, that law is repealed. See article 3912k.*

#### Art. 3912e-1. Compensation of Designated Officers in Counties of 225,000 to 500,000

(a) The provisions of this Section shall apply to and control in each county in the State of Texas having a population of two hundred and twenty-five thousand (225,000) inhabitants or more, and less than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census.

(b) From and after the effective date of this Act up to January 1, 1946, the County Judge, the Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such counties shall each receive a salary of Sixty-five Hundred Dollars (\$6500) per annum. The County Treasurer of such counties shall receive Thirty-six Hundred Dollars (\$3600) per annum salary. The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Five Thousand Dollars (\$5000) per annum. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

(c) The County Commissioners of such counties shall each receive a salary of Forty-eight Hundred Dollars (\$4800) per annum, Thirty-six Hundred Dollars (\$3600) of which shall be paid out of the General Fund and Twelve Hundred Dollars (\$1200) of which shall be paid out of the Road and Bridge Funds of such counties.

(d) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees not to exceed Four Thousand Dollars (\$4000) each. All Justices of the Peace and Constables of such counties who are compensated on a salary basis as provided by law shall receive an annual salary of not to exceed Four Thousand Dollars (\$4000) each, such salary to be fixed by the Commissioners Court. Provided, however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office

and to make up the maximum compensation provided for in this subsection. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

(e) Provided further that from and after January 1, 1946, the salaries of the herein above enumerated officers shall be as herein after set out.

(f) The Sheriff, District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such counties shall each receive a salary of Seventy-four Hundred Dollars (\$7400) per annum. The County Treasurer of such counties shall receive per annum a salary of Thirty-nine Hundred Dollars (\$3900). The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Six Thousand Dollars (\$6000) per annum. The County Judge of such counties shall each receive a salary of Seventy-four Hundred Dollars (\$7400) per annum in lieu of all other compensation now provided by law. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

(g) The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred Dollars (\$5500) per annum and such salaries shall be out of the Road and Bridge Funds of such counties.

(h) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees not to exceed Forty-five Hundred Dollars (\$4500) each. All Justices of the Peace and Constables of such counties who are compensated on a salary basis as provided by law shall receive an annual salary of not to exceed Forty-five Hundred Dollars (\$4500) each, such salary to be fixed by the Commissioners Court. Provided, however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officer shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

[Acts 1937, 45th Leg., p. 151, ch. 81, § 1; Acts 1945, 49th Leg., p. 106, ch. 74, § 1; Acts 1945, 49th Leg., p. 428, ch. 271, § 1.]

#### Art. 3912e-2. Compensation of Certain District, County and Precinct Officers in Counties of 355,000; Appointment of Assistants to District Attorneys

Provisions of this Section shall apply to and control in each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding or any future Federal Census.

(a) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Precinct Officers in such counties shall be compensated for their services on a fee basis unless the Commissioners Court shall have determined otherwise as provided by law.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand, Five Hundred Dollars (\$4,500) each.

All fees and commissions earned by such official shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this Section, shall be compensated after an order duly enacted by the Commissioners Court on an annual salary basis from said Officers' Salary Fund or the General Fund, as the case may be; such salaries shall be fixed by the Commissioners Court at a reasonable sum not to exceed Four Thousand, Five Hundred Dollars (\$4,500) each; provided further that in such counties in which the Commissioners Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners Court shall not be required to place said salaries in all precincts within the county at equal amounts, but said Commissioners Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners Court determines to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex officio Notary Public.

(b) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County

Clerk, and Assessor and Collector of Taxes in such counties shall receive a salary of Seven Thousand, Four Hundred Dollars (\$7,400) per annum from the Officers' Salary Fund or General Fund, as the case may be. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property.

(c) The County Commissioners in such counties shall each receive a salary of Four Thousand, Eight Hundred Dollars (\$4,800) per annum, and said salaries shall be paid in equal monthly installments, three-fourths ( $\frac{3}{4}$ ) out of the Road and Bridge Fund and one-fourth ( $\frac{1}{4}$ ) out of the General Fund of the county.

(d) The Judge of the County Court at Law of Harris County, Texas, and the Judge of the County Court at Law No. 2 of Harris County, Texas, each shall receive a salary of Six Thousand Dollars (\$6,000) per annum to be paid out of the County Treasury by the Commissioners Court in equal monthly installments.

(e) The Commissioners Court of each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census shall determine annually the salary to be paid the County Treasurer of each of such counties from county funds for his services to the county at a reasonable sum not to exceed Three Thousand, Nine Hundred Dollars (\$3,900) per annum. Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he shall receive and be entitled to retain such compensation from such districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925. Said County Treasurer shall be allowed to appoint one assistant at a reasonable salary, not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum, and the Commissioners Court of such county may allow one additional assistant upon adequate proof of necessity therefor at a reasonable salary not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. Said assistants shall be appointed by such County Treasurer and shall take the usual oath of office, and, in addition thereto, shall give such surety bond as may be required by such County Treasurer or by the Commissioners Court of such county. Said assistants shall have authority to do and perform in the name of such County Treasurer such acts of a clerical or ministerial character as may be required of them by such County Treasurer. The County Treasurer of each of such counties may designate, subject to the approval of the Commissioners Court, any named person to act for him and in his stead when

he shall be absent from the county, unavoidably detained, or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners Court and such Court may require any desired proof in connection therewith. Upon the approval by the Commissioners Court of the appointment of any such person so designated, and the recording of such appointment in the minutes of the Commissioners Court, thereupon such person may act for such County Treasurer during such periods of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given such additional surety bond, if any, in favor of such county and the County Treasurer thereof as their interests may appear and in such amounts as the Commissioners Court may require.

(f) The Criminal District Attorney or District Attorney in such counties shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars (\$4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars (\$4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) of said assistants, Three Thousand Dollars (\$3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum each. He may employ two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred Eighty Dollars (\$2,280) per annum each. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. He may employ three (3) abstracters and fix their salaries as follows: Two (2) of said abstracters at not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum each, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. All such salaries above mentioned shall be payable from the Officers' Salary Fund or General Fund, as the case may be.

Should such Criminal District Attorney or District Attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties

of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: One (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred Fifty Dollars (\$4,250) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars (\$3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred Sixty Dollars (\$2,160) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed Eighteen Hundred Dollars (\$1,800) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars (\$1,500) per annum. He may employ one information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars (\$900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers' Salary Fund or General Fund, as the case may be. In addition to the salary herein provided for investigators for Criminal District Attorneys or District Attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars (\$50) per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowances to be paid monthly by such county by warrant drawn upon said Officers' Salary Fund or General Fund, as the case may be, upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the District Attorney before being paid.

(g) The County Auditor in such counties shall receive for his services to the county an annual salary of Six Thousand, Five Hundred Dollars (\$6,500) payable from county funds. This shall not be construed nor shall it operate to repeal Article 1672, Revised Civil Statutes of Texas, nor Article 8245, Revised Civil Statutes of

Texas, as amended by Acts 1935, 44th Legislature, page 316, Chapter 119, Section 1. [Acts 1937, 45th Leg., p. 151, ch. 81, § 2; Acts 1939, 46th Leg., Spec.Laws, p. 607, § 1.]

**Art. 3912e-3. Salary of County Judge in Counties of 12,227 to 12,230**

Hereafter, the County Judge in counties having a population of not less than twelve thousand, two hundred and twenty-seven (12,227) and not more than twelve thousand, two hundred and thirty (12,230) according to the last preceding Federal Census of 1930, shall receive an annual salary of Eighteen Hundred Dollars (\$1800) per year, payable in twelve (12) equal monthly installments, and said payments shall be paid out of the funds as now provided by the general laws governing the payment of County Judges in Texas.

[Acts 1937, 45th Leg., p. 398, ch. 199, § 1.]

**Art. 3912e-4. District, County and Precinct Officers in Counties of Over 500,000, Payment of Assistants and Expenses of Conduct of Offices**

Sec. 1. Each District, County and Precinct officer in counties having a population of more than five hundred thousand (500,000) inhabitants according to the last preceding or any future Federal Census, receiving an annual salary as compensation, shall be entitled, subject to the provisions of Section 19 of Chapter 465 of the Acts of the 44th Legislature, First Called Session,<sup>1</sup> generally known as the "Fee Bill," and subject to the amendments to said Act subsequently adopted, to issue warrants against the salary fund created for his office in payment of the services of deputies, assistants, clerks, stenographers and investigators, for such amounts as said employees may be entitled to receive for services performed under their authorizations of employment. And such officers shall be entitled to file claims for and issue warrants in payment of all actual and necessary expenses incurred by them in the conduct of their offices, such as stationery, stamps, telephone, traveling expenses, premiums on official bonds of themselves and of their deputies, and premiums on burglary, theft and robbery insurance protecting public funds, and other necessary expenses. If such expenses be incurred in connection with any particular case, such claims shall state such case. All such claims shall be subject to the audit of the County Auditor, and if it appears that any item of such expense was not incurred by such officer, or such item was not a necessary expense of office, or such claim is incorrect or unlawful, such item shall be by such Auditor rejected, in which case the correctness, legality or necessity of such item may be adjudicated in any court of competent jurisdiction.

Sec. 2. In addition to any other sums now provided for by law, the District Attorney or Criminal District Attorney in each of the counties affected hereby may be allowed, by order of the Commissioners' Court of his county,

such amount as said Court may deem necessary to pay for or aid in the proper administration of the duties of his office, which sum may be expended in aid of the discharge of the duties of his office for any purposes, whether similar or dissimilar to the type of expense authorized by Article 3899 of the Revised Civil Statutes, as amended by Chapter 37 of the Acts of the First Called Session of the 45th Legislature, and whether for a purpose similar or dissimilar to those authorized by the preceding Section of this Act; provided further that all sums expended under the authority of this Section of this Act shall not exceed Two Thousand, Five Hundred (\$2,500.00) Dollars in any one calendar year; and provided further that such amounts as may be authorized hereunder shall be allowed by said Court upon written application of such District Attorney or Criminal District Attorney showing the necessity therefor, and the Commissioners' Court may require any other evidence that it may deem necessary to show the necessity for any such expenditures, and its judgment in allowing or refusing to allow any such expenditure shall be final; provided no payment for any such expenditure shall be made except upon an itemized sworn statement of such expense filed in the manner provided for by Section 19 of Chapter 465 of the Acts of the 44th Legislature,<sup>1</sup> generally known as the "Fee Bill," and all such expenditures and the accounts therefor shall be subject to approval of the County Auditor and audit by such Auditor as in the case of other claims and expenditures.

Sec. 3. In addition to the other sums provided for by law and allowed by this Act, the District Attorney or Criminal District Attorney may expend such sums as in his opinion may be reasonably necessary to aid the Grand Jurors of this County in the investigation of crime, provided that the expenditures authorized by this Section shall never exceed Two Thousand, Five Hundred (\$2,500.00) Dollars in any one calendar year, and the same shall be made only when three-fourths ( $\frac{3}{4}$ ) of the members of the Grand Jury to be aided thereby and a Judge of a District Court having general criminal jurisdiction in the county shall join the District Attorney in certifying to the necessity therefor. In making any expenditure hereby authorized, neither the District Attorney nor the Grand Jury shall be required, in order to obtain necessary warrants against the county funds to state beforehand the case or cases being investigated, nor to disclose the identity of the person or persons suspected to be guilty, and such warrants shall issue, subject to the above limitations; provided, that from time to time, additional sums may be requested and allowed in like manner and subject to the same limitations; and provided further, that such District Attorney and his bondsmen shall be and remain liable for any illegal expenditures of such funds; and provided that within twelve (12) months after the termination of the Grand Jury's investigation of the matter, from which said funds were expended,

the District Attorney or Criminal District Attorney expending the same shall duly account under oath in writing for the same by proper accounts, vouchers and receipts to the County Auditor in such form as said Auditor shall require, and the County Auditor shall, upon the receipt of any such accounts, vouchers or receipts, keep secret all matters pertaining to the same for twelve (12) months after his receipt thereof. Nothing herein contained shall be construed as authorizing any Grand Jury to investigate any matter that it may not by law now be authorized to investigate.

Sec. 4. Nothing herein contained shall be construed as repealing any other Act now in effect authorizing the officers hereby affected to make expenditures of public funds in connection with their respective offices for purposes other than those herein named, but this law shall be cumulative of all such laws.

[Acts 1941, 47th Leg., p. 174, ch. 127.]

<sup>1</sup> Article 3912e, § 19.

**Art. 3912e-4a. District and County Officers in Counties of Over 500,000; Compensation; Assistants to County Treasurer and District Attorneys**

**Application of Law**

Sec. 1. The provisions of this law shall apply to and control in each county in this state having a population of 500,000 or more, according to the last preceding or any future Federal Census.

**County Treasurer and Assistants**

Sec. 2. The County Treasurer in such counties shall have one assistant at a reasonable salary, to be determined by the Commissioners Court, not exceeding that allowed assistants or deputies of other officers, and the Commissioners Court of such counties may allow one additional assistant upon adequate written sworn proof of necessity therefor for a limited emergency period at a reasonable salary to be determined by the Commissioners Court. Said assistants shall be appointed in the same manner as the assistants of other officers and subject to the same legal requirements. They shall take the usual oath of office, and, in addition thereto, shall give such surety bond as may be required by the Commissioners Court of such counties, to run in favor of the County Treasurer or the county as their interests may appear. Said assistants shall have authority to do and perform in the name of the County Treasurer such acts of a clerical or ministerial character as may be required of them by such County Treasurer. The County Treasurer of each of such counties may designate, subject to the approval of the Commissioners Court, one of said assistants or any named person to act for him and in his stead when he shall be absent from the county, unavoidably detained, incapacitated, or be unable to act. The particulars justifying such appointment shall be placed before the Commissioners Court, which is authorized to make full inquiry into the necessity for such appointment. Upon approval

by the Commissioners Court of such appointment, it shall be recorded in the minutes of the court, and thereupon such person may act for the County Treasurer during such periods of absence, detention, incapacity, or inability to act; provided, however, that such appointment shall not become effective until such named person shall have given such additional surety bond in favor of the county and the County Treasurer, as their interests appear, in such amount or amounts as the Commissioners Court may in its order require, and provided any person named other than a regularly appointed assistant shall receive no salary from the county.

Commissioners Court, Authority as to Appointments, Salaries, Etc.; Applications for Increases in Salaries; Hearing

Sec. 3. The provisions of this Act shall not apply where the laws in effect on January 1, 1945, in such counties place no limit upon the salaries authorized for deputies, assistants, employees or department heads; and it shall apply only to those salaries or compensations of deputies, assistants, employees or department heads on which the laws in effect January 1, 1945, placed a fixed limit.

The Commissioners Court of counties coming within the terms of this Act may continue to appoint or approve the appointment of deputies, assistants, employees or department heads and fix their salaries where such matters come within its jurisdiction, and may continue in the manner provided by law to approve the number and fix or approve the salaries of deputies, assistants, employees or department heads legally appointed by county or flood control district officials or department heads within the limitations of number and amount of salaries now or hereafter fixed by law.

In cases in which an officer of said county or any flood control district or conservation or reclamation district wholly within the boundaries of said county desires to increase the salary of any deputy, assistant, employee or department head beyond the limit now fixed by existing law, he shall file a sworn application addressed to the Commissioners Court with the County Clerk and County Auditor, giving full data and information to the extent and in the manner required by the regulations of the court previously adopted and entered in its minutes; and where such sworn applications have been filed, the court shall fix a date for the hearing and consideration thereof, and shall give public notice of the date of such hearing. All such applications shall be acted upon in open court at such public hearing, and any citizen or taxpayer may appear in favor of or in opposition to such application. Such hearing may be continued by the court from day to day. If, after such hearing, the court be of the opinion that such application should be granted in whole or in part, it shall have authority to grant, or authorize the grant of, an increase in salary of any deputy, assistant, employee or department head appointed by the

court, or under its authority, or appointed by any other elected or appointed officials, or department heads, in such sum as the court may in its discretion determine without regard to existing limitations of amounts: provided, however, that the amount so allowed or the total amount so allowed when added to funds previously budgeted shall not create any deficit for the current year in any fund, or create an obligation against future revenues; provided further, such increases shall not become effective until approved by the County Auditor and he shall have affixed his certificate to the application that funds are, or will be, available for payment thereof when due.

**Regulations, Hours of Work, Vacations, Sick Leaves**

Sec. 4. The Commissioners Court of such counties shall have the authority to adopt and enforce all reasonable regulations applying to all such deputies, assistants, employees or department heads governing the hours of work, vacations, and sick leaves, in the interest of obtaining uniform restrictions, conditions, and regulations governing all such deputies, assistants, employees or department heads in the manner now provided by law.

**Budget Adjustments or Revisions; Notice; Hearing**

Sec. 5. In all cases where the appointment of any deputy, assistant, or employee, or the fixing of any salary, or the approval thereof by the Commissioners Court and the County Auditor shall make necessary an adjustment in the previously adopted budget of such counties, such adjustment or revision may be made to the extent and in the manner made necessary by the appointment and increase or approval of any salaries of any such deputies, assistants, employees or department heads, or by any increase in salary of any officials herein authorized; provided, that in case of necessity to amend any previously adopted budget, it shall be done only upon submission to the Commissioners Court of a supplemental budget by the County Auditor as Budget Officer of the county which shall be advertised and set for hearing in the same manner as for adoption of the original county or flood control district budget for the year. Only one supplemental budget may be filed and adopted in each calendar year.

**Assistants to District Attorneys and Criminal District Attorneys; Investigators; Clerks and Other Employees; Transfers of Funds**

Sec. 6. (a) The District Attorney or Criminal District Attorney, in the counties to which this bill applies are hereby authorized to appoint not exceeding twelve assistants and to fix their salaries at a rate not to exceed the following amounts: one First Assistant District Attorney or First Assistant Criminal District Attorney, not to exceed Six Thousand Dollars (\$6,000.00) per annum; two assistants, not to exceed Four Thousand Eight Hundred Dollars (\$4,800.00) per annum each; four assistants not to exceed Four Thousand Six Hundred Dollars (\$4,600.00) per annum each; five

assistants not to exceed Three Thousand Six Hundred Dollars (\$3,600.00) per annum each. He may employ three investigators and fix their salaries at not to exceed Three Thousand Dollars (\$3,000.00) per annum each. He may employ three court reporters and fix their salaries at not to exceed Three Thousand Dollars (\$3,000.00) per annum each. He may employ one combination stenographer and accountant and fix his salary at not to exceed Two Thousand Four Hundred Dollars (\$2,400.00) per annum. He may employ one combination information clerk and switchboard operator, who shall also handle all telephone calls for the various courts in the Criminal Courts Building, and fix a salary of not exceeding One Thousand Five Hundred Dollars (\$1,500.00) per annum. He may employ one chief civil clerk and fix his salary at not to exceed Two Thousand Four Hundred Dollars (\$2,400.00) per annum. He may employ three abstractors and fix their salaries at not to exceed Two Thousand Four Hundred Dollars (\$2,400.00) per annum each. All such salaries above mentioned shall be payable from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to the Officers' Salary Fund. All salaries provided for in the above Section in excess of Three Thousand Six Hundred Dollars (\$3,600.00) per annum shall be subject to the approval of the Commissioners Court before becoming effective in the manner provided in Section 2 of this Act.

(b) Should such a District Attorney or Criminal District Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and approval of the Commissioners Court, he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: one additional Assistant District Attorney or Assistant Criminal District Attorney at a salary not to exceed Four Thousand Five Hundred Dollars (\$4,500.00) per annum; four additional assistants at salaries not to exceed Three Thousand Six Hundred Dollars (\$3,600.00) per annum each. He may employ two additional stenographers and fix their salaries at a rate not to exceed Two Thousand One Hundred Dollars (\$2,100.00) per annum each. He may employ one stenographer additionally, at a salary not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) per annum. He may employ one civil clerk and fix his salary at a rate not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) per annum. But such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of such county, all such salaries to be paid from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court

shall transfer the necessary funds from the General Fund of the County to such Officers' Salary Fund. In addition to the salary herein provided for investigators for District Attorneys or Criminal District Attorneys, each of such investigators may be allowed a sum not to exceed Fifty Dollars (\$50.00) per month for repair and maintenance expense of an automobile owned and maintained by said investigator and used by him in the investigation of crime, said allowance, or allowances, to be paid monthly by the county upon warrants drawn upon the Officers' Salary Fund, or General Fund, as the case may be, upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the District Attorney and shall be paid as provided by law for other claims.

**Provisions Cumulative**

Sec. 7. This Act shall be cumulative of all laws in force on its effective date, or subsequently enacted, with respect to reports, auditing, accounting, budgets, and approval and disapproval of claims for salaries, compensation, or other expenses, and all such laws shall remain in force, it being the intention of the Legislature that all statutes prescribing the form, time, method, and manner of reports and accounting for all public funds shall continue in full force and effect.

[Acts 1945, 49th Leg., p. 122, ch. 85.]

**Art. 3912e-4b. Application of Art. 3912e-4a Extended**

Sec. 1. The provisions of the Acts of 1945, Forty-ninth Legislature, page 122, Chapter 85,<sup>1</sup> shall hereafter apply to all counties having a population of three hundred and fifty-five thousand (355,000) inhabitants or more, according to the last preceding or any future Federal Census.

Sec. 2. This Act shall not be construed to repeal or limit the provisions of House Bill No. 324 of the present Session of the Legislature;<sup>2</sup> nor shall it be construed to affect or repeal the provisions of any other laws relating to the subject matter of said Acts, 1945, Forty-ninth Legislature, page 122, Chapter 85, except to the extent of a conflict with prior Acts; it being the intention of this Act to enlarge the scope of the classification of the Acts of 1945 above-mentioned without affecting other Acts adopted at the present Session of the Legislature except to the extent of an irreconcilable conflict.

[Acts 1949, 51st Leg., p. 374, ch. 198.]

<sup>1</sup> Article 3912e-4a.

<sup>2</sup> Article 3912e-14.

**Art. 3912e-4c. District, County and Precinct Officers in Counties of 600,000 or More**

Sec. 1. In all Counties in this State having a population of six hundred thousand (600,000) or more according to the last preceding Federal Census the Commissioners Court shall fix the salaries of the County Judge, Sheriff, District or Criminal District Attorney, Tax Assessor-Collector, District Clerk, County Clerk at

not less than Nine Thousand, Nine Hundred Dollars (\$9,900) nor more than Ten Thousand, Eight Hundred Dollars (\$10,800) per annum; the Judges of the County Courts at Law, the Judges of the County Criminal Courts and the Judge of the County Probate Court at not less than Eight Thousand, Two Hundred Dollars (\$8,200) nor more than Nine Thousand, Six Hundred Dollars (\$9,600) per annum; the Justices of the Peace and Constables not to exceed Eight Thousand, Two Hundred Dollars (\$8,200) per annum; provided however that the Justices of the Peace and Constables whose precincts lie wholly or in part in cities having a population of four hundred and ninety-two thousand (492,000) or more shall receive not less than Seven Thousand, Five Hundred Dollars (\$7,500) per annum.

Sec. 2. In all such Counties, the Judges of the several District and Criminal District Courts shall each receive from County funds for all judicial and administrative services required of them an annual salary or allowance of Five Thousand Dollars (\$5,000), to be paid by the Commissioners Court out of any funds available for that purpose, in twelve (12) equal monthly installments. The additional compensation provided to be paid to the District Judges shall be in lieu of all other compensation heretofore provided to be paid to such Judges out of County funds; but shall be in addition to the salary payable out of State funds in such Counties, provided however any amount paid by the State in excess of Seven Thousand Dollars (\$7,000) shall reduce the County's payment by the same amount, provided however that the salary of the Judges of the several District and Criminal District Courts of such Counties from both State and County funds shall not exceed Twelve Thousand Dollars (\$12,000) per annum.

Sec. 3. The Commissioners Court of such Counties shall fix the salaries of all Deputies, Clerks and all other employees including road and bridge employees. In fixing such salaries the Court shall take into consideration the duties and responsibilities of said employees as well as the cost of living at all times.

Sec. 4. Said Commissioners Court is hereby authorized to allow such automobile expense to any officers or employee in the performance of their official duties, as they may deem necessary.

Sec. 5. This Act shall control in the Counties of the class to which it applies; but it shall not repeal any other laws regulating the payment of salaries of officers covered hereby except to the extent of conflict with such prior laws.

[Acts 1951, 52nd Leg., p. 689, ch. 396.]

**Art. 3912e-4d. Counties of 500,000 or More; District, County and Precinct Officers, Deputies and Employees**

**Salaries Fixed by Commissioners Court**

Sec. 1. In all counties in this State having a population of five hundred thousand (500,-



000) or more according to the last preceding Federal Census, the Commissioners Court of such counties shall fix the salaries of county officials in the following manner:

**Counties of 500,000 to 600,000**

Sec. 2. In all counties in this State having a population of five hundred thousand (500,000) but not exceeding six hundred thousand (600,000) according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the County Judge, Sheriff, County Clerk, District or Criminal District Attorney, Tax Assessor-Collector and District Clerk at Ten Thousand, Eight Hundred Dollars (\$10,800) per annum; the Judges of the County Courts at Law at Nine Thousand, Six Hundred Dollars (\$9,600) per annum; the County Commissioner at Eight Thousand, Four Hundred Dollars (\$8,400) per annum; and the County Treasurer at Eight Thousand, Two Hundred Dollars (\$8,200) per annum.

**Amendment of Order or Budget**

Sec. 3. The Commissioners Court in such counties is hereby authorized and shall amend the present order of said court fixing the maximum salaries of said officials and to amend the budget for the fiscal year, 1953, from and at the effective date of this Act for the balance of the said fiscal year in order to grant any increases in salaries authorized by this Act. Provided, however, that nothing, except as herein provided shall be construed as in any manner modifying or changing the provisions of the present rule or any amendments thereto provided for the preparation of the County Budget.

**Counties of 600,000 or More; County Judge and County Commissioners**

Sec. 4. In all counties of this State having a population of six hundred thousand (600,000) or more according to the last preceding Federal Census, the County Judge and Commissioners of such counties shall be paid an annual salary in equal monthly installments as follows: County Judge, Thirteen Thousand, Five Hundred Dollars (\$13,500); County Commissioners, Nine Thousand, Six Hundred Dollars (\$9,600).

**Sheriff; District and County Attorneys and Clerks;  
Tax Assessor and Collector**

Sec. 5. In all of said counties the Commissioners Court of such counties shall fix the salaries of the Sheriff, Criminal District Attorney, District Attorney, County Attorney, County Clerk, District Clerk, and Tax Assessor and Collector at not less than Nine Thousand, Nine Hundred Dollars (\$9,900) nor more than Eleven Thousand, Eight Hundred Dollars (\$11,800) per annum payable in equal monthly installments; provided, however, that the total salary received by the Tax Assessor and Collector, including all additional fees and compensation, shall not exceed Fifteen Thousand, Eight Hundred Dollars (\$15,800) in the aggregate.

**Judges of County Courts at Law, County Criminal Courts and Probate Courts**

Sec. 6. In all of such counties the Commissioners Court of such counties shall fix the salaries of the County Courts at Law and the Judges of the County Criminal Courts at not less than Eight Thousand, Two Hundred Dollars (\$8,200) nor more than Ten Thousand, Six Hundred Dollars (\$10,600) and the salaries of the Judges of the Probate Courts at not less than Eight Thousand, Two Hundred Dollars (\$8,200) nor more than Ten Thousand, Eight Hundred Dollars (\$10,800). Each of such salaries payable in equal monthly installments.

**Justices of the Peace and Constables**

Sec. 7. In all of such counties, the Commissioners Court of such counties shall fix the salaries of the Justices of the Peace and the Constables at not to exceed Eight Thousand, Eight Hundred Dollars (\$8,800) per annum, to be paid in equal monthly installments; provided, however, that the Justices of the Peace and Constables whose precincts lie wholly or in part in cities having a population of four hundred and thirty thousand (430,000) or more according to the last preceding Federal Census shall receive not less than Seven Thousand, Five Hundred Dollars (\$7,500) per annum.

**Judicial and Administrative Services of District Judges**

Sec. 8. In all of such counties, the Judges of the several District Courts in such counties shall each receive from county funds for all judicial and administrative services required of them an annual salary or allowances of Four Thousand, Five Hundred Dollars (\$4,500) to be paid by the Commissioners Court in equal monthly installments. Such additional compensation shall be in addition to the salaries payable out of State funds; provided, however, that the annual aggregate salary of said District Judges from both State and County sources shall not exceed Thirteen Thousand, Five Hundred Dollars (\$13,500).

**Deputies, Clerks and Employees**

Sec. 9. The Commissioners Court of such counties shall fix the salaries of all Deputies, Clerks, and other employees including road and bridge employees as well as the number of Deputies, Clerks, and other employees including road and bridge employees to be allowed all District, County and Precinct Officers. In fixing the salaries of all Deputies, Clerks and other employees including road and bridge employees, the Commissioners Court shall always take into consideration the duties and responsibilities of said Deputies, Clerks, and other employees; provided, however, in the office of the County Auditor the County Auditor shall prepare a list of the number of assistants sought to be appointed, their duties, and the salaries to be paid each, and shall certify the list to the District Judges, and they shall carefully consider the application for the appointment of said assistants and may make all necessary inquiries concerning the qualifications of the persons named, the positions sought to

be filled and the reasonableness of the salaries requested, and if, after such considerations, a majority of the District Judges shall approve the appointments sought to be made or any number thereof, they shall prepare a list of the appointments so approved and the salaries to be paid each and certify said list to the Commissioners Court of said county, and the Commissioners Court shall thereupon order the amount paid from the general fund of the county upon the performance of the services; and said Court shall appropriate adequate funds for the purpose.

**Automobile Expense**

Sec. 10. Said Commissioners Courts are hereby authorized to allow such automobile expense to any officer or employee in the performance of his official duties as they may deem necessary.

**Salaries in Lieu of Other Compensation; Other Laws Not Repealed**

Sec. 11. The salaries and other compensation contained in this Act shall be in lieu of all other salaries and compensation now received by any District, County or Precinct Officer of such counties; provided, however, that nothing in this Act shall be construed to repeal, alter or amend any of the provisions of Senate Bill No. 271, Chapter 368, page 620 of the Acts of the Fifty-second Legislature, 1951,<sup>1</sup> or of the provisions of Senate Bill No. 426, Chapter 366, page 699 of the Acts of the Fifty-first Legislature, 1949,<sup>2</sup> except in so far as such Acts are in conflict with or limited by the provisions of this Act.

[Acts 1953, 53rd Leg., p. 1050, ch. 435; Acts 1954, 53rd Leg., 1st C.S., p. 92, ch 42, § 1.]

<sup>1</sup> Penal Code, Art. 1436-1, § 57.

<sup>2</sup> Article 5139.

**Art. 3912e-5. Additional Salary to County Judge in Counties of 105,000 to 125,000 as Member of Juvenile Board**

In all counties having a population of not less than one hundred five thousand (105,000) nor more than one hundred twenty-five thousand (125,000) according to the last preceding or any future Federal Census, the County Judge shall receive the sum of Fifteen Hundred (\$1500.00) Dollars annually in addition to his salary now or hereafter provided by law, such addition in salary to be paid such County Judge as a member of the Juvenile Board provided by Article 5139, Revised Civil Statutes, 1925; such additional salary shall be paid in twelve (12) equal installments out of the General Funds of such county, upon the order of the Commissioners' Court.

[Acts 1941, 47th Leg., p. 549, ch. 345, § 1.]

**Art. 3912e-5a. Repealed by Acts 1957, 55th Leg., p. 183, ch. 81, § 3**

**Art. 3912e-5b. Additional Compensation for Lubbock County Judge as Member of Juvenile Board**

Sec. 1. The County Judge of Lubbock County, Texas, may be allowed the additional com-

ensation of Fifteen Hundred Dollars (\$1500) per annum for serving as a member of the County Juvenile Board which shall be paid in twelve (12) equal monthly installments out of the General Fund of such County.

Sec. 2. This Act shall be cumulative of the existing laws and shall not be construed as repealing any law fixing the compensation of the County Judge of Lubbock County, Texas.

[Acts 1955, 54th Leg., p. 1238, ch. 495.]

**Art. 3912e-5c. Additional Compensation for Bexar County Judge as Member of Juvenile Board**

Sec. 1. The County Judge of Bexar County, Texas, shall be allowed the additional compensation in the sum of Four Thousand, Five Hundred Dollars (\$4,500) per annum for serving as a member of the Bexar County Juvenile Board which shall be paid in twelve (12) equal monthly installments out of the General Fund of such County, and which additional compensation shall be in addition to all other salary or compensation now paid to such County Judge.

Sec. 2. This Act shall be cumulative of all existing general laws of this State and shall not be construed as repealing any such law fixing the compensation of the County Judge of Bexar County, Texas.

[Acts 1957, 55th Leg., p. 183, ch. 81.]

**Art. 3912e-5d. Additional Compensation for Tarrant County Judge as Member of Juvenile Board**

As compensation for the added duties imposed upon him as a member of the Tarrant County Juvenile Board, the County Judge of Tarrant County shall be allowed additional compensation of Two Thousand, Three Hundred Dollars (\$2,300) annually, to be paid in twelve (12) equal monthly installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for the County Judge of Tarrant County. The Commissioners Court of Tarrant County shall provide the necessary funds for payment of the additional salary herein provided.

[Acts 1961, 57th Leg., p. 672, ch. 311, § 1.]

**Art. 3912e-5e. Additional Compensation for Brazoria County Judge as Member of Juvenile Board**

(a) The Commissioners Court of Brazoria County may supplement the salary of the County Judge, as compensation for his services as a member of the Juvenile Board, in an amount not to exceed \$3,500 per year, to be paid in 12 equal monthly installments out of the general fund or other appropriate fund of Brazoria County.

(b) The supplemental salary authorized by this Section is in addition to all other salary or compensation now paid or authorized to be paid to the County Judge from any source.

[Acts 1965, 59th Leg., p. 874, ch. 430, § 1.]

**Art. 3912e-6. Salaries of Officers in Counties of 100,000 to 190,000 to be Computed at Maximum Allowable Under Laws Existing August 24, 1935**

The Commissioners Courts in all counties of Texas having a population of not less than one hundred thousand (100,000) and not more than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, in fixing the annual salary that shall be paid an officer named in Section 13 of Chapter 465 of the Acts of the Second Called Session of the Forty-fourth Legislature, where such officer's salary is determined in compliance with the laws which existed on August 24, 1935, and is based upon population, shall compute and fix the salary of each of such officers at the maximum amount which could have been paid each of such officers under the laws existing on August 24, 1935, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census; provided the Commissioners Courts in said counties are authorized to amend the present order of said Court fixing the maximum salary of said officers for the fiscal year 1941 from and after the effective date of this Act for the balance of said fiscal year, according to the Federal Census of 1940, and thereafter according to the last preceding Federal Census.

[Acts 1941, 47th Leg., p. 597, ch. 366, § 1.]

**Art. 3912e-7. Salaries of Certain Officers in Counties of 100,000 to 190,000**

The Commissioners Courts in all counties of Texas having a population of not less than one hundred thousand (100,000) and not more than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, in fixing the annual salary that shall be paid an officer named in Section 13 of Chapter 465 of the Acts of the Second Called Session of the Forty-fourth Legislature, where such officer's salary is determined in compliance with the laws which existed on August 24, 1935, and is based upon population, shall compute and fix the salary of each of such officers at the maximum amount which could have been paid each of such officers under the laws existing on August 24, 1935, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census; provided the Commissioners Courts in said counties are authorized to amend the present order of said Court fixing the maximum salary of said officers for the fiscal year 1941 from and after the effective date of this Act for the balance of said fiscal year, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census.

[Acts 1941, 47th Leg., p. 1326, ch. 597, § 1.]

**Art. 3912e-8. Counties Over 190,000; Salaries of County Attorneys; Assistants; Stenographers**

**Sec. 1.** County Attorneys in counties having a population of more than one hundred ninety thousand (190,000) inhabitants, according to

the last preceding Federal Census, general or special, where there is no resident District Attorney or Criminal District Attorney shall receive a salary not to exceed Seventy-four Hundred (\$7400.00) Dollars per annum. All such salaries shall be paid out of the Officers' Salary Fund.

**Sec. 2.** County Attorneys in counties to which this bill applies are hereby authorized to appoint not exceeding nine (9) assistants, and fix their salary rate at not to exceed the following amounts; one First Assistant, not to exceed Six Thousand (\$6,000.00) Dollars per annum; two assistants at not to exceed Fifty-five Hundred (\$5500.00) Dollars per annum each; four assistants at not to exceed Forty-six Hundred (\$4600.00) Dollars per annum each; two assistants at not to exceed Thirty-six Hundred (\$3600.00) Dollars per annum each. He may employ three investigators and fix their salaries at not to exceed Thirty-six Hundred (\$3600.00) Dollars per annum each. He may employ two court reporters and fix their salaries at not to exceed Three Thousand (\$3,000.00) Dollars each. He may employ two stenographers and fix their salaries at not to exceed Twenty-four Hundred (\$2400.00) Dollars per annum each. He may employ one chief clerk and fix his salary at not to exceed Thirty-six Hundred (\$3600.00) Dollars per annum. All such salaries mentioned in Sections 1 and 2 shall be payable from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court shall transfer necessary funds from the General Fund of the county to the Officers' Salary Fund. In addition to the salaries provided for the investigators herein, each of such investigators may be allowed a sum not to exceed Fifty (\$50.00) Dollars per month for repair and maintenance expense for automobile owned and maintained by such investigator, and used by him in investigation of crime; such allowance to be paid monthly by the county upon warrants drawn upon the Officers' Salary Fund or the General Fund, as the case may be, upon written claim of such investigator, showing that said automobile was in official use; and such claim shall bear the approval of the County Attorney, and shall be paid as provided by law for other claims.

**Sec. 3.** Should such County Attorney be of the opinion that the number of assistants or stenographers above provided is not adequate for the proper investigation and prosecution of crime and the effective performance of the duties of his position, with the advice and approval of the Commissioners Court he may appoint additional assistants and stenographers or other employees, as hereinafter limited, and fix their salaries as follows: one additional assistant County Attorney, with a salary not to exceed Forty-five Hundred (\$4500.00) Dollars per annum; one additional assistant County Attorney with a salary not to exceed Thirty-six Hundred (\$3600.00) Dollars per annum. He may employ two additional stenographers and

fix their salaries at not to exceed Twenty-one Hundred (\$2100.00) Dollars per annum each. [Acts 1945, 49th Leg., p. 505, ch. 307, § 1; Acts 1947, 50th Leg., p. 90, ch. 61, § 1.]

**Art. 3912e-9. Salaries of Certain Officers in Counties of 300,000 to 500,000**

Sec. 1. The provisions of this Act shall apply to and control in each of the counties in this state having a population of not less than 300,000, nor more than 500,000, according to the last preceding Federal Census.

Sec. 2. The County Judge, Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk, and the Assessor-Collector of Taxes of such counties shall each receive a salary of Seventy-seven Hundred (\$7700.00) Dollars per annum. The County Auditor of such counties shall receive a salary of Seventy-four Hundred (\$7400.00) Dollars per annum, in lieu of any and all compensation now provided by law; provided that any salary or compensation now provided by law to be paid such County Auditors out of any special funds, including compensation rendered navigation, levee, drainage, road or school districts, shall be charged and collected, but shall be paid into the general fund of such counties. The County Treasurer of such counties shall each receive a salary of Forty-two Hundred (\$4200.00) Dollars per annum. The Judges of the County Courts-at-Law and the County Criminal Courts of said counties shall each receive a salary of Sixty-three Hundred (\$6300.00) Dollars per annum. All such salaries shall be paid out of the officers' salary fund or the general fund of such counties, as the case may be.

**Repeal**

*Acts 1949, 51st Leg., p. 1068, ch. 552, § 2, repeals that part of section 2 of this article setting the compensation of county auditors. See art. 1645, note.*

Sec. 3. The County Treasurer, upon the approval of the Commissioners Court, shall be allowed to appoint one (1) assistant at a salary not to exceed Twenty-four Hundred (\$2400.00) Dollars per annum, and a second assistant at a salary not to exceed Twenty-one Hundred (\$2100.00) Dollars per annum. Said assistants shall be appointed by the Treasurer and shall take the usual oath of office, and in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners Court. Said assistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. All of said salaries enumerated in this section shall be paid from the general fund of such counties.

Sec. 4. The Commissioners Court of each of said counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount for all of said county offices named in Sections 1 and 2 above, equal to a fifteen (15%) per cent increase in the sala-

ry of all the employees, deputies and assistants for all of said offices, based on the pay roll of the particular office as of March, 1945. The salaries of the officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the general fund or officers salary fund, or road and bridge fund of such counties.

Sec. 5. The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred (\$5500.00) Dollars per annum and such salaries shall be paid out of the Road and Bridge Funds or the General Fund of such counties, as the case may now be.

Sec. 6. All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees and/or salary of Forty-seven Hundred Fifty (\$4750.00) Dollars each; provided, however, that all fees and commissions, whether current or delinquent, which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum compensation provided for in this section. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

Sec. 7. This Act shall not repeal any of the provisions of Chapters 169 and 585, 47th Legislature, Regular Session, page 240, 1309 (1941) now appearing as Article 3912-e, Section 19(f-1) and (h-2), Vernon's Annotated Civil Statutes. The fifteen (15%) per cent increase in salary herein provided for shall be in addition to the salaries of employees, deputies and assistants provided for in said Acts.

Sec. 8. Section 1 of Chapter 81, Acts 45th Legislature, Regular Session, page 151 (1937), now appearing as Article 3912e-1, Vernon's Annotated Civil Statutes, and all other laws in conflict herewith be, and the same are hereby repealed, insofar as the same are in conflict with the provisions of this Act, but not otherwise.

Sec. 9. The salary of the County Engineer of such county shall not exceed Fifty-two Hundred Fifty (\$5250.00) Dollars per annum, said salary to be fixed by the Commissioners Court and paid out of the road and bridge fund of such counties.

Sec. 10. The salary of the County School Superintendent of such counties shall be Five Thousand Fifty (\$5050.00) Dollars per annum, said salary to be paid out of the school equalization fund.

Sec. 11. It is further provided that the minimum wage to be paid any road and bridge employee of such counties shall be not less than Fifty (50¢) cents per hour.

Sec. 12. If any section, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. It is further the intention of the Legislature, in the event this

Act shall be declared unconstitutional, that the salaries and compensations of the employees, deputies and assistants of the public officers named in this Act and the maximum amount of salaries and compensations which may be paid to said employees, deputies and assistants, shall remain the same as may now be fixed by existing law.

[Acts 1945, 49th Leg., p. 510, ch. 312.]

**Art. 3912e-10. Repealed by Acts 1947, 50th Leg., p. 943, ch. 402, § 3**

**Art. 3912e-11. Counties of 300,000 to 500,000, Salaries of Certain Officers In**

Sec. 1. The provisions of this Act shall apply to and control in each of the counties in this State having a population of not less than three hundred thousand (300,000), nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census.

Sec. 2. The County Judge, Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk, and the Assessor-Collector of Taxes of such counties shall each receive a salary of Seven Thousand, Seven Hundred Dollars (\$7,700) per annum. The County Auditor of such counties shall receive a salary of Seven Thousand, Four Hundred Dollars (\$7,400) per annum, in lieu of any and all compensation now provided by law to be paid such County Auditors out of any special funds, including compensation rendered navigation, levee, drainage, road or school districts, shall be charged and collected, but shall be paid into the General Fund of such counties. The County Treasurer of such counties shall each receive a salary of Four Thousand, Two Hundred Dollars (\$4,200) per annum. The Judges of the County Courts-at-Law and the County Criminal Courts of said counties shall each receive a salary of Six Thousand, Three Hundred Dollars (\$6,300) per annum. Justices of the Peace and Constables of such counties whose offices are located in the Courthouse of such counties and whose precincts shall contain not less than two hundred thousand (200,000) inhabitants, according to the last or any future Federal Census, and who shall be compensated on a salary basis, shall receive a salary of Four Thousand, Seven Hundred and Fifty Dollars (\$4,750) per annum. All such salaries shall be paid out of the Officers Salary Fund or the General Fund of such counties as the case may be.

Sec. 3. The County Treasurer, upon the approval of the Commissioners Court, shall be allowed to appoint one (1) assistant at a salary not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and a second assistant at a salary not to exceed Two Thousand, One Hundred Dollars (\$2,100) per annum. Said assistants shall be appointed by the Treasurer and shall take the usual Oath of Office, and in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners Court. Said as-

stants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. All of said salaries enumerated in this Section shall be paid from the General Fund of such counties.

Sec. 4. The Commissioners Court of each said counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount for all of said County Officers named in Sections 1, 2 and 9, hereof, equal to a fifteen per cent (15%) increase in the salary of the employees, deputies and assistants for all of said offices, based on the pay roll of the particular office as of March 1945. The salaries of the Officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the General Fund or Officers Salary Fund, or Road and Bridge Fund of such counties.

Sec. 5. The County Commissioners of such counties shall each receive a salary of Five Thousand, Five Hundred Dollars (\$5,500) per annum and such salaries shall be paid out of the Road and Bridge Funds or the General Funds of such counties, as the case may be.

Sec. 6. (a) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law, shall be entitled to retain annual fees of Four Thousand, Seven Hundred and Fifty Dollars (\$4,750) each; provided, however, that all fees and commissions, whether current or delinquent, which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum compensation provided for in this Section. No such Officer shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

(b) All Justices of the Peace and Constables of such counties who are compensated on a salary basis, whose offices are located in the Courthouse of such counties and whose precincts shall contain not less than two hundred thousand (200,000) inhabitants, according to the last or any future Federal Census, shall receive the annual salary provided in Section 2, hereof. All other Justices of the Peace and Constables in said counties who are being compensated on a salary basis, shall be paid in accordance with the provisions of Article 3912-e, Section 19(c), Vernon's Annotated Civil Statutes.

Sec. 7. This Act shall not repeal any of the provisions of Chapters 169 and 585, Forty-seventh Legislature, Regular Session, Page 240, 1309 (1941), now appearing as Article 3912-e, Section 19(f-1) and (h-2) Vernon's Annotated Civil Statutes. The fifteen per cent (15%) increase in salary herein provided for shall be in addition to the salaries of employees, deputies and assistants provided for in said Acts, but in

no event shall the salary of any employee, deputy or assistant be increased beyond a maximum of Four Thousand, Two Hundred Dollars (\$4,200) per year except the deputies, assistants and employees of the District Attorney or Criminal District Attorney, whose salaries are now fixed by law as greater than such maximum of Four Thousand, Two Hundred Dollars (\$4,200) per year.

Sec. 8. Section 1 of Chapter 81, Acts, Forty-fifth Legislature, Regular Session, page 151 (1937) now appearing as 3912e-1, Vernon's Annotated Civil Statutes, and all other laws in conflict herewith be, and the same are hereby repealed, in so far as the same are in conflict with the provisions of this Act, but not otherwise.

Sec. 9. The salary of the County Engineer of such county shall not exceed Five Thousand, Two Hundred and Fifty Dollars (\$5,250) per annum, said salary to be fixed by the Commissioners Court and paid out of the Road and Bridge Fund of such counties.

Sec. 10. The salary of the County School Superintendent of such counties shall be Five Thousand and Fifty Dollars (\$5,050) per annum, said salary to be paid out of the School Equalization Fund.

Sec. 11. It is further provided that the minimum wage to be paid any Road and Bridge Fund employee of such counties shall be not less than fifty cents (50¢) per hour.

Sec. 12. This Act is amendatory of Senate Bill No. 246, Acts, Forty-ninth Legislature, Regular Session, page 510, now appearing as Article 3912e-9 Vernon's Annotated Civil Statutes, and all provisions of said Act in conflict herewith are hereby repealed, but not otherwise.

Sec. 13. If any section, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. It is further the intention of the Legislature, in the event this Act shall be declared unconstitutional, that the salaries and compensation of the employees, deputies and assistants of the public officers named in this Act and the maximum amount of salaries and compensations which may be paid to said employees, deputies and assistants, shall remain the same as may now be fixed by existing law.

[Acts 1947, 50th Leg., p. 545, ch. 322.]

**Art. 3912e-12. Counties of Less Than 20,000; Salary Basis; Fixing of Salaries**

In all counties of this State having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and in which counties the Commissioners Courts have determined that the county officials shall be compensated on a salary basis, such Commissioners Courts are authorized to fix the salaries of county officials in such counties, their deputies, clerks and assistants. Said compensation shall be paid in monthly or

semimonthly installments, as said Court may determine. Provided, however, that no salary fixed herein by such Commissioners Court shall be in an amount to exceed Five Thousand, Four Hundred Dollars (\$5,400) for the County Officers and in an amount of Three Thousand, Six Hundred Dollars (\$3,600) for Deputies, Assistants, and Clerks; provided, further that no salary shall be set at a figure lower than that paid for the Calendar Year 1946.

[Acts 1947, 50th Leg., p. 772, ch. 381, § 1.]

**Art. 3912e-13. Counties of 300,000 to 500,000; Appointment and Compensation of Deputies, Assistants and Employees**

Sec. 1. In all counties in this state having a population of more than three hundred thousand (300,000) inhabitants and less than five hundred thousand (500,000) inhabitants, according to the last preceding Federal Census, whenever any district or county officer, with the exception of District Attorneys and Criminal District Attorneys, shall require the services of deputies, assistants, and employees in the performance of his duties he shall apply to the Commissioners Court for authority to appoint such deputies, assistants, and employees, stating by sworn application the number needed, the position to be filled, the duties to be performed, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants, and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners Court or any member thereof attempt to influence the appointment of any person as deputy, assistant, or clerk in any office. Upon the entry of such order the officers applying for such deputies, assistants, and employees shall be authorized to appoint them. The compensation which may be allowed to the deputies, assistants, or clerks above named for their services shall be as follows:

First assistant or chief deputy not less than Three Thousand Six Hundred (\$3,600.00) Dollars per annum; one assistant or deputy not less than Three Thousand (\$3,000.00) Dollars per annum; other assistants, deputies, and employees not to exceed Two Thousand Four Hundred (\$2,400.00) Dollars per annum each; provided that bailiffs serving Criminal District Courts shall be paid not less than One Hundred Seventy-five (\$175.00) Dollars per month each; and heads of departments in county or district offices shall receive not less than Twenty-five Hundred (\$2500.00) Dollars per annum each. No payment shall be made to any deputy, assistant or employee

for any service performed prior to the authorization of his appointment and until he shall have subscribed to the constitutional oath of office, and such appointment and oath have been filed with the County Clerk for record. The amounts allowed to be paid to deputies, assistants and employees shall be paid after rendition of service out of said Officers' Salary Fund as provided for by law.

Sec. 2. In addition to the compensation as provided in Section 1, the Commissioners Court of each of said Counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount for all of said county offices named in Section 1 above, equal to a fifteen (15%) per cent increase in the salary of all the employees, deputies, and assistants for all of said offices, based on the pay roll of the particular office as of March, 1945. The salaries of the officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the general fund or officers' salary fund, or road and bridge fund of such counties.

[Acts 1947, 50th Leg., p. 943, ch. 402.]

**Art. 3912e-14. Counties of Over 350,000; Assistants of District Attorneys and Criminal District Attorneys**

Sec. 1. In all counties having a population of three hundred and fifty thousand (350,000) or more, according to the last preceding Federal Census, if the District Attorney or Criminal District Attorney be of the opinion that the amount of the salaries, the number of assistants, stenographers, investigators, or other employees now provided by law for his office is not adequate for the proper investigation and prosecution of crime and the efficient performance of the duties of his office, he may, with the advice and approval of the Commissioners Court, increase the salaries heretofore authorized by law, appoint additional assistants, stenographers, investigators, or other employees and fix their salaries.

Sec. 2. Before such increases in salaries or additional appointments shall become effective, they shall be approved by the Commissioners Court and County Auditor of such county. All of the salaries shall be paid from the Officers' Salary Fund if adequate; if inadequate, the Commissioners Court may pay such salaries out of the General Fund, the Jury Fund, or any other funds available for the purpose. Provision for the payment of such additional sums may be made by supplemental budget as now provided by law, if not otherwise provided for.

Sec. 3. This Act shall be cumulative of all laws in force on its effective date or subsequently enacted with respect to reports, auditing, accounts, budgets, and approval and disapproval of claims for salaries, compensation or other expenses, and all such laws shall remain in full force and effect, except as otherwise especially provided herein. The County Auditor,

as the Budget Officer of said counties and the Commissioners Court, shall prepare supplemental budget of said County to make proper provision for the payment of the increases in salaries or payment of salaries of additional authorized employees in accordance with the provisions of law regulating the budget.

[Acts 1949, 51st Leg., p. 189, ch. 106.]

**Art. 3912e-15. Counties of 301,000 to 398,000; Compensation of Employees, Deputies and Assistants**

Sec. 1. The provisions of this Act shall apply to and control in each of the counties of this State having a population of not less than three hundred and one thousand (301,000) inhabitants, nor more than three hundred and ninety-eight thousand (398,000) inhabitants according to the last preceding or any future Federal Census, and to justice precincts in such counties having a population of not less than two hundred thousand (200,000) inhabitants according to the last preceding or any future Federal Census.

Sec. 2. The effective date of this Act shall be January 1, 1950.

Sec. 3. This Act shall apply to the employees, deputies and assistants of the following named offices of said counties, to wit: District Judges, District Attorney or Criminal District Attorney, District Clerk, County Judge, Sheriff, Tax Assessor-Collector, County Clerk, County Treasurer, County Commissioners, County Auditor, and to Justices of the Peace and Constables of such counties whose offices are located in the Courthouse of such counties and whose precincts shall contain not less than two hundred thousand (200,000) inhabitants according to the last preceding or any future Federal Census and who are compensated on a salary basis.

Sec. 4. The County Commissioners Court shall grant to each of the offices named in this Act a minimum budget appropriation for deputy clerk hire of not less than the payroll for March, 1949, of said office multiplied by twelve (12) months plus an additional fifteen per cent (15%).

Sec. 5. Each and every employee who is on the payroll of any of said offices when this Act becomes effective shall receive a fifteen per cent (15%) increase in salary provided said employee was on any part of the March, 1949, payroll of said office.

Sec. 6. The officials of the offices named in this Act must submit to the County Commissioners Court the number of positions and salary of each position which are necessary to perform the duties of said office and the County Commissioners Court shall approve said positions and salaries provided the total of said positions and salaries does not exceed the annual budget appropriation for deputy clerk hire for said office.

Sec. 7. Should any portion, paragraph, Section, sentence, clause, phrase or word in this Act be unconstitutional or void, it shall not af-

fect any other portion of this Act. The Legislature expressly declares the provisions of this Act to be severable.

[Acts 1949, 51st Leg., p. 586, ch. 315.]

**Art. 3912e-16. County Officers in Counties of 90,000 to 145,000; County Attorneys in Counties of 145,000 to 250,000**

Sec. 1. In all counties in this State having a population of more than ninety thousand (90,000) persons according to the last preceding Federal Census, and not more than one hundred, forty-five thousand (145,000) population according to such Federal Census and with a taxable valuation for county purposes of not less than Eighty-five Million Dollars (\$85,000,000) according to the tax rolls as prepared by the tax assessor-collector of the respective counties for the year 1948, the county judge, county clerk, sheriff, tax assessor-collector, district clerk, the criminal district attorney or the county attorney performing the duties of a district attorney and the county attorney shall receive an annual salary of Six Thousand, Five Hundred Dollars (\$6,500) payable in equal monthly installments. The salary of such officers from the effective date of this Act, for the remainder of the year 1949, shall be paid on the same ratio basis as the remainder of the year bears to the total annual salary provided herein.

Sec. 2. In all counties in this State having a population of not less than one hundred, forty-five thousand (145,000) and not more than two hundred, fifty thousand (250,000) inhabitants according to the last preceding Federal Census, and with a taxable valuation for county purposes of not less than Eighty-five Million Dollars (\$85,000,000) according to the tax rolls as prepared by the tax assessor-collector of the respective counties for the year 1948, the county attorney of such counties shall receive an annual salary of Seven Thousand, Four Hundred Dollars (\$7,400) payable in equal monthly installments from the Officers' Salary Fund in such counties.

Sec. 3. All such salaries shall be paid in twelve (12) equal installments per year and paid from funds now provided by law for payment of such officials.

Sec. 4. If any part, Section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have enacted, and does here now enact such remaining portions despite any such invalidity.

Sec. 5. This Act is not intended and shall not be considered or construed as repealing any laws or law now on the Statute book except those in conflict herewith, and to the extent of the conflict only, but in other respects shall be construed as being cumulative law.

[Acts 1949, 51st Leg., p. 960, ch. 528.]

**Art. 3912e-17. Counties of 4,660 to 4,740; Compensation of Officials**

Sec. 1. In each county in the State of Texas having a population of more than four thousand, six hundred sixty (4,660) and less than four thousand, seven hundred forty (4,740) according to the last preceding Federal Census the Commissioners Courts of such counties are authorized to fix the salaries of county and district officials at a sum of not more than Eleven Thousand Dollars (\$11,000) per year.

Sec. 2. All such salaries shall be paid from funds now provided by law for such officials.

[Acts 1961, 57th Leg., p. 1173, ch. 528; Acts 1971, 62nd Leg., p. 1822, ch. 542, § 24, eff. Sept. 1, 1971; Acts 1971, 62nd Leg., p. 1970, ch. 608, § 1, eff. Aug. 30, 1971.]

Section 2 of Acts 1971, 62nd Leg., p. 1970, ch. 608, provided: "As used in this Act, 'the last preceding Federal Census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3912e-18. Counties of 11,700 to 11,800, 10,300 to 10,372 and 9,500 to 9,700; Compensation of Officials**

In each county of the State of Texas having a population of not less than 11,700 and not more than 11,800, not less than 10,300 and not more than 10,372, or not less than 9,500 and not more than 9,700, according to the last preceding federal census, the county and district officials are to be compensated as determined by the Commissioners Courts in an amount not to exceed Ten Thousand Dollars (\$10,000), provided no salary shall be set at a figure lower than that actually paid on June 16, 1961.

[Acts 1961, 57th Leg., p. 1111, ch. 502, § 1; Acts 1971, 62nd Leg., p. 1828, ch. 542, § 48, eff. Sept. 1, 1971.]

**Art. 3912e-19. Counties of 13,500 to 13,800; Compensation of Officials**

In each county of the State of Texas having a population of not less than 13,500 and not more than 13,800, according to the last preceding federal census, the county and district officials are to be compensated as determined by the Commissioners Courts in an amount not to exceed Eight Thousand, Five Hundred Dollars (\$8,500), provided no salary shall be set at a figure lower than that actually paid on August 28, 1961.

[Acts 1961, 57th Leg., p. 1174, ch. 529, § 1; Acts 1971, 62nd Leg., p. 1852, ch. 542, § 138, eff. Sept. 1, 1971.]

**Art. 3912e-20. Counties of 4,000 to 4,200; Compensation of Officials**

Sec. 1. In each county in the State of Texas having a population of more than four thousand (4,000) persons according to the last preceding federal census and not more than four thousand, two hundred (4,200) persons according to such federal census; the Commissioners Courts of such counties are authorized to fix the salaries of county and district officials at a sum of not less than the salary paid for the calendar year of 1962, nor more than Eight Thousand, Five Hundred Dollars (\$8,500) per year.



Sec. 2. All such salaries shall be paid from funds now provided by law for such officials. [Acts 1963, 58th Leg., p. 49, ch. 31; Acts 1971, 62nd Leg., p. 1838, ch. 542, § 88, eff. Sept. 1, 1971.]

**Art. 3912e-21. Counties of 18,200 to 18,600; Compensation of Officials and Employees**

Sec. 1. In every county in the State of Texas, having a population of not less than eighteen thousand, two hundred (18,200) and not more than eighteen thousand, six hundred (18,600), according to the last preceding federal census, the Commissioners Courts are authorized to fix the salaries of county, district, and appointed officials at a sum of not less than the salary paid on March 29, 1963, nor more than Ten Thousand Dollars (\$10,000) per year. Chief deputies, deputies, clerks, assistants, secretaries, custodians and general employees may be paid salaries not to exceed Six Thousand, Five Hundred Dollars (\$6,500) annually.

Sec. 2. All salaries adjusted under provisions of Section 1 of this Act shall be paid from funds now provided by law for such elected and appointed officials and all employees in all counties under provisions of this Act.

[Acts 1963, 58th Leg., p. 52, ch. 34; Acts 1971, 62nd Leg., p. 1829, ch. 542, § 51, eff. Sept. 1, 1971.]

**Art. 3912e-22. Counties of 49,400 to 50,000; Compensation of Officials**

Sec. 1. In each county in the State of Texas having a population of at least 49,400 and not more than 50,000 according to the last preceding federal census, the Commissioners Court shall fix the salaries of the county and district officials named in Section 2 of this Act at not more than \$12,000 per year; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Sec. 2. This Act applies to the salaries of district clerks, county clerks, county judges, judges of the county courts at law, county treasurers, sheriffs, assessors and collectors of taxes, county attorneys, and county commissioners.

[Acts 1967, 60th Leg., p. 1238, ch. 561, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1843, ch. 542, § 104, eff. Sept. 1, 1971.]

**Art. 3912e-23. Counties of 91,000 to 97,500 and 122,000 to 140,000; Compensation of Officials**

In any county having a population of not less than 91,000 nor more than 97,500, and in any county having a population of not less than 122,000 nor more than 140,000, according to the last preceding federal census, the Commissioners Court may fix salaries of not more than \$15,000 for all county officers and officials except the judge of the court of domestic relations, the judge of the county court at law, and the County Judge.

[Acts 1969, 61st Leg., p. 1801, ch. 605, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1844, ch. 542, § 107, eff. Sept. 1, 1971.]

**Art. 3912e-24. Counties of 160,000 to 170,000; Compensation of Officials**

Sec. 1. In any county having a population of not less than 160,000 nor more than 170,000, according to the last preceding Federal Census, the district clerk, the county clerk, the assessor and collector of taxes, and the sheriff shall be paid a salary of not less than \$15,000 per annum as determined by the Commissioners Court of such county.

Sec. 2. In any county having a population of not less than 160,000 nor more than 170,000, according to the last preceding Federal Census, the chief deputy district clerk, the chief deputy county clerk, the chief deputy sheriff for the civil division and the chief deputy sheriff for the criminal division, and the chief deputy assessors and collectors of taxes shall be paid a salary of not more than \$14,000 per annum as determined by the Commissioners Court of such county.

Sec. 3. In any county having a population of not less than 160,000 and not more than 170,000, according to the last preceding Federal Census, the Commissioners Court may employ and fix the number, as well as the salaries, of the deputies, administrative assistants, and clerks of any district, county, or precinct officer, including any member of the Commissioners Court, in an amount not to exceed \$14,000 per year.

[Acts 1969, 61st Leg., 2nd C.S., p. 192, ch. 34, §§ 1 to 3; Acts 1971, 62nd Leg., p. 2843, ch. 930, §§ 1 to 3, eff. Sept. 1, 1971.]

**Art. 3912e-25. District and County Clerks in All Counties; Automobile Expense Allowance**

The Commissioners Court of any county in this State may provide a county owned automobile or a reasonable personal automobile allowance for the district clerk and the county clerk to cover expenses incurred by the clerks or their deputies in the course of performing official duties.

[Acts 1971, 62nd Leg., p. 1796, ch. 530, § 1, eff. Aug. 30, 1971.]

**Art. 3912e-26. Counties of 52,300 to 57,000; Compensation of Officials**

In any county having a population of not less than 52,300 nor more than 57,000, according to the last preceding federal census, the commissioners court may set the salaries of elected officials of the county at not more than \$20,000 per year and salaries of deputies and employees of the county at not more than \$12,500 per year.

[Acts 1971, 62nd Leg., p. 1878, ch. 555, § 1, eff. June 1, 1971.]

Section 2 of the 1971 act provided: "Sec. 2. As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3912e-27. Counties of 18,200 to 18,600; Compensation of Officers and Employees**

The commissioners court of any county having a population of not less than 18,200 nor more than 18,600, according to the last preceding federal census, may set the salary of any officer of the county at an amount not to exceed \$18,000 per year and may set the salary of any clerk, deputy, or other employee of the county at an amount not to exceed \$10,000 per year, all these salaries to be payable in 12 equal installments.

[Acts 1971, 62nd Leg., p. 1951, ch. 591, § 1, eff. Aug. 30, 1971.]

**Art. 3912e-28. Counties of 16,150 to 16,350; Compensation of Officials**

The commissioners court of any county having a population of not less than 16,150 nor more than 16,350 according to the last preceding federal census, may set at not more than \$12,000 per year each the salary or salaries of the county judge, the county attorney, the county auditor, the county clerk, the sheriff, the county treasurer, the district clerk, the county tax assessor and collector, the justices of the peace, and the county commissioners.

[Acts 1971, 62nd Leg., p. 2430, ch. 777, § 1, eff. Aug. 30, 1971.]

Section 2 of the 1971 act provided: "As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3912f-1. Salaries of Sheriffs and Deputies in Counties of 27,235 to 27,300; Appointment of Deputies**

Sec. 1. In all counties of the State of Texas having a population of not less than twenty-seven thousand, two hundred and thirty-five (27,235) and not more than twenty-seven thousand, three hundred (27,300), according to the last preceding Federal Census, in which there are no District Attorneys, the Commissioners Courts of such counties shall, from and after effective date of this Act, compensate the Sheriffs of such counties upon an annual salary basis and shall fix the salaries of such Sheriffs in such counties at not less than Three Thousand, Three Hundred Dollars (\$3,300) and not more than Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) equal monthly installments, out of the Officers Salary Fund of such counties, by warrant drawn upon said fund.

Sec. 2. The Sheriffs of such counties are hereby authorized and empowered to appoint at least one Deputy Sheriff and one special Deputy Sheriff; the powers and duties of the special Deputy Sheriff shall be the same as those of other Deputy Sheriffs and, in addition, his special duty shall be to assist such Sheriffs in all matters arising in and connected with the efficient conduct of said office, including the finger printing, photography work, and investigation work of said office. The Commissioners Courts of such counties shall, from and after

effective date of this Act, compensate such Deputy Sheriffs and such special Deputy Sheriffs upon an annual salary basis and shall fix the salary of such special Deputy Sheriff at not exceeding One Thousand, Two Hundred Dollars (\$1,200) per annum, payable in twelve (12) equal monthly installments out of the Officers Salary Fund in such counties by warrant drawn upon said fund by the Commissioners Courts. The compensation of the Deputy Sheriff shall likewise be fixed at an annual salary of not exceeding One Thousand Dollars (\$1,000), payable in twelve (12) equal monthly installments in like manner as provided for the payment of the salaries of special Deputy Sheriffs, hereinabove set out.

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the Statute books except those in conflict herewith and to the extent of the conflict only, but in other respects shall be construed as being cumulative thereof.

[Acts 1939, 46th Leg., Spec.L., p. 749.]

**Art. 3912f-2. Salary of Chief Deputy in Office of Sheriff, Tax Collector and Assessor in Counties of 6,000 to 6,200**

Sec. 1. From and after the effective date of this Act in all counties in this State having a population of not less than six thousand (6,000), and not more than six thousand, two hundred (6,200) according to the last Federal Census, and where the duties of Sheriff, Tax Collector and Assessor are performed by one official, the Commissioners Court is hereby authorized to pay the chief deputies of such officers in such counties a sum not exceeding Two Thousand, One Hundred Dollars (\$2,100) per annum, payable in equal monthly installments.

Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from such funds as the Commissioners Court may designate.

[Acts 1939, 46th Leg., Spec.Laws, p. 733.]

**Art. 3912f-3. Salaries of Sheriffs and Deputies in Counties of 25,600 to 25,889 in Which There Are No District Attorneys**

Sec. 1. In all counties of the State of Texas having a population of not less than twenty-five thousand, six hundred (25,600) and not more than twenty-five thousand, eight hundred and eighty-nine (25,889), according to the last Federal Census, in which there are no district attorneys, the Commissioners Courts of such counties shall, from and after effective date of this Act, compensate the sheriffs of such counties upon an annual salary basis and shall fix the salaries of such sheriffs in such counties at not less than Thirty-three Hundred Dollars (\$3300) and not more than Thirty-six Hundred Dollars (\$3600) per annum, payable in twelve (12) equal monthly installments, out of the Officers Salary Fund of such counties, by warrant drawn upon said fund.

Sec. 2. The sheriffs of such counties are hereby authorized and empowered to appoint at

least one deputy sheriff and one special deputy sheriff; the powers and duties of the special deputy sheriff shall be the same as those of other deputy sheriffs and, in addition, his special duty shall be to assist such sheriffs in all matters arising in and connected with the efficient conduct of said office, including the finger printing, photography work, and investigation work of said office. The Commissioners Courts of such counties shall, from and after effective date of this Act, compensate such deputy sheriffs and such special deputy sheriffs upon an annual salary basis and shall fix the salary of such special deputy sheriffs at not exceeding One Thousand, Two Hundred Dollars (\$1,200) per annum, payable in twelve (12) equal monthly installments out of the Officers Salary Fund in such counties by warrant drawn upon said fund by the Commissioners Courts. The compensation of the deputy sheriffs shall likewise be fixed at an annual salary of not exceeding One Thousand Dollars (\$1,000), payable in twelve (12) equal monthly installments in like manner as provided for the payment of the salaries of special deputy sheriffs, hereinabove set out.

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the statute books except those in conflict herewith and to the extent of the conflict only, but in other respects shall be construed as being cumulative thereof. [Acts 1941, 47th Leg., p. 546, ch. 342.]

**Art. 3912f-4. Salaries of Sheriffs and Deputies in Counties of 43,900 to 44,000**

In all counties having a population of not less than forty-three thousand, nine hundred (43,900) and not more than forty-four thousand (44,000) according to the last preceding Federal Census the sheriff of such counties shall receive an annual salary not to exceed Six Thousand, Five Hundred Dollars (\$6,500). The chief deputy sheriff of such counties shall receive an annual salary not to exceed Three Thousand, Six Hundred Dollars (\$3,600). All other deputy sheriffs of such counties shall receive annual salaries not to exceed Three Thousand Dollars (\$3,000).

[Acts 1949, 51st Leg., p. 1196, ch. 606, § 1.]

**Art. 3912f-5. Salaries of Deputy Sheriffs in Certain Counties**

In all counties of this State having a population of not less than 9,100 or more than 9,300, not less than 9,350 or more than 9,600, not less than 10,373 or more than 10,390, not less than 10,600 or more than 11,000, not less than 12,400 or more than 12,800, not less than 25,000 or more than 26,000, not less than 27,000 or more than 27,500, or not less than 29,000 or more than 30,000, according to the last preceding federal census, the Commissioners Courts of such counties are hereby authorized, when in their judgment the financial condition of the county and the need of the deputy sheriffs of such counties justifies an increase, to enter an order increasing the compensation being paid

by such county to such deputy sheriffs in an additional amount not to exceed 20 percent of the sum being paid to such deputy sheriffs at the time of such increase.

[Acts 1967, 60th Leg., p. 2059, ch. 762, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1823, ch. 542, § 28, eff. Sept. 7, 1971.]

**Art. 3912f-6. Salaries of Deputy Sheriffs in Counties of 46,700 to 47,900**

In each county having a population of not less than 46,700 nor more than 47,900, according to the last preceding federal census, the commissioners court may fix the salary of each deputy sheriff at not more than \$7,600 per year.

[Acts 1971, 62nd Leg., p. 1322, ch. 348, § 1, eff. May 24, 1971.]

Section 2 of the 1971 act provided: "As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3912f-7. Longevity Pay for Deputy Sheriffs in Counties of Not Less Than 150,000**

(a) The commissioners court of each county in this state with a population of not less than 150,000, according to the last preceding federal census, shall provide longevity pay for each commissioned deputy of the sheriff's department in accordance with this Act.

(b) Each commissioned deputy shall receive, in addition to his regular compensation, longevity pay of not less than \$4 per month for each year of service in the department. Years of service in excess of 25 do not count for the purposes of this subsection.

(c) The longevity pay provided by this Act becomes effective in a county at the beginning of the first fiscal year immediately following the time this Act becomes applicable to the county.

[Acts 1973, 63rd Leg., p. 757, ch. 332, § 1, eff. Aug. 27, 1973.]

**Art. 3912g. Increase of Compensation of Precinct, County and District Officers and Employees**

Sec. 1. The Commissioners Court in each county of this State is hereby authorized, when in their judgment the financial condition of the county and the needs of the officer justify the increase, to enter an order increasing the compensation of the precinct, county and district officers, or either of them, in an additional amount not to exceed twenty-five (25%) percent of the sum allowed under the law for the fiscal year of 1948, whether paid on fee or salary basis; provided, however, the members of the Commissioners Court may not raise the salaries of any of such Commissioners Court under the terms of this Act without raising the salary of the remaining county officials in like proportion.

Sec. 2. The Commissioners Court in each county of this State is hereby authorized, when in their judgment the financial condition of

the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of any such deputy, assistant or clerk in an additional amount not to exceed thirty-five (35%) per cent of the sum allowed under the law for the fiscal year of 1948.

Sec. 3. All of such officers who were paid on a fee basis during the fiscal year of 1948, and who are now to be paid on a salary basis, shall be paid an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year of 1935, and not more than the maximum sum allowed such officer under the laws existing on August 24, 1948, together with the twenty-five (25%) per cent increase allowed by this Act within the discretion of the Commissioners Court.

Sec. 4. Before the Commissioners Court shall be authorized to change the salary of the public officials provided for in this Act, said Court shall publish at least once a week for three (3) consecutive weeks in a newspaper in the respective county, notice of their intention to make changes of salaries of those affected.

Sec. 5. The provisions of this Act shall be cumulative of all other laws pertaining to salaries of county and precinct officers and their deputies and assistants.

Sec. 6. If any section, subsection, paragraph, or portion of this Act is held invalid, such holding shall not affect the validity of the remaining portions of the Act; and the Legislature hereby declares that it would have enacted such remaining portions despite such invalidity.

[Acts 1949, 51st Leg., p. 601, ch. 320.]

#### Art. 3912h. Salaries in Counties of 398,000 or More

Sec. 1. In all counties having a population of three hundred and ninety-eight thousand (398,000) or more, according to the last preceding or any future Federal Census, the provisions of this Act shall control as to the amounts of the salaries to be paid the officers named herein. All such salaries shall be fixed by the Commissioners Court of such counties, within the limitations herein provided, not oftener than once each year, by an order made and entered in the minutes of said Court. The salaries of all of such officers shall be determined and fixed at the same time. Such salaries shall be payable in monthly installments out of such funds as may be lawfully available for the purpose as provided in the order of the Commissioners Court.

Sec. 2. The County Judge, the Sheriff, the District Attorney or Criminal District Attorney, as the case may be, the District Clerk, the County Clerk and the Assessor and Collector of Taxes in such counties shall receive a salary of not less than Seven Thousand, Seven Hundred Dollars (\$7,700) and not more than Nine Thousand, Nine Hundred Dollars (\$9,900) each per

annum. The compensation fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of any criminal fugitive from justice and rewards received for the recovery of stolen property.

Sec. 3. The County Treasurer of such counties shall receive an annual salary of not less than Three Thousand, Nine Hundred Dollars (\$3,900) nor more than Five Thousand Dollars (\$5,000) per annum for his services in handling county funds. Where such Treasurer also acts as treasurer of any navigation district, or drainage districts, he shall receive and be entitled to retain such compensation from such districts as may be provided by law regulating such districts, in addition to his salary for acting as Treasurer of the county.

Sec. 4. Judges of any County Courts at Law and County Criminal Courts irrespective of any slight variation in the names of such courts, in such counties shall each receive a salary of not less than Six Thousand, Five Hundred Dollars (\$6,500) and not more than Eight Thousand, Two Hundred and Fifty Dollars (\$8,250) per annum.

[Acts 1949, 51st Leg., p. 760, ch. 408; Acts 1949, 51st Leg., p. 1179, ch. 593, § 1.]

#### Art. 3912i. Maximum Salaries of Justices of the Peace and Constables; Precinct Officers; Certain Counties

##### Counties of Less Than 20,000

Sec. 1. In each county in the State of Texas having a population of less than twenty thousand inhabitants according to the last preceding federal census where the precinct officials are compensated on a salary basis, the Commissioners Courts shall fix the salaries of the officials named in this Act at not more than Five Thousand Dollars (\$5,000.00) per annum.

##### Counties of 20,000 to 46,000

Sec. 2. In each county in the State of Texas having a population of at least twenty thousand and not more than forty-six thousand inhabitants according to the last preceding federal census, the Commissioners Courts shall fix the salaries of the precinct officials named in this Act at not more than Six Thousand Dollars (\$6,000.00) per annum.

##### Counties of 46,000 to 98,000

Sec. 3. In each county in the State of Texas having a population of at least forty-six thousand and one and not more than ninety-eight thousand inhabitants according to the last preceding federal census, the Commissioners Courts shall fix the salaries of the precinct officials named in this Act at not more than Seven Thousand Dollars (\$7,000.00) per annum.

##### Counties of 98,000 to 195,000

Sec. 4. In each county in the State of Texas having a population of at least ninety-eight thousand and one and not more than one hundred ninety-five thousand inhabitants according to the last preceding federal census, the

Commissioners Courts shall fix the salaries of the precinct officials named in this Act at not more than Eight Thousand Dollars (\$8,000.00) per annum.

Counties of 195,000 to 600,000

Sec. 5. (a) In each county in the State of Texas having a population of at least one hundred ninety-five thousand and one and not more than six hundred thousand inhabitants according to the last preceding federal census, the Commissioners Courts shall fix the salaries of the precinct officials named in this Act at not more than Twelve Thousand Dollars (\$12,000.00) per annum.

(b) In each county of the state having a population of at least twelve thousand, four hundred and not more than twelve thousand, eight hundred, according to the last preceding federal census, the Commissioners Court shall fix the salaries of the precinct officials named in this Act at not more than Six Thousand Dollars (\$6,000) per annum.

Act Inapplicable to Counties of Over 600,000

Sec. 6. The provisions of this Act shall not apply to any county having a population in excess of six hundred thousand inhabitants, according to the last preceding federal census.

Justices of the Peace and Constables; Applicability of Act

Sec. 7. The provisions of this Act shall be applicable only to Justices of the Peace and Constables.

Funds from Which Salaries Payable

Sec. 8. The salaries of the officials named in this Act shall be paid out of the Officers' Salary Fund and/or general fund of the respective counties.

Amount of Salaries; Fixing; Construction of Act

Sec. 9. The Commissioners Courts shall not be required to fix the salaries in all precincts at equal amounts, but shall have discretion to determine the amount of salaries to be paid each Justice of the Peace and each Constable in the several precincts on an individual basis without regard to the salaries paid in other precincts or to other officials. In arriving at the compensation to be paid the officials governed by the provisions of this Act the Commissioners Courts shall consider the financial condition of their respective counties and the duties and needs of their officials, but in no event shall any Commissioners Court set the salary of any official at a figure in excess of the maximum compensation prescribed for the officials of that county by this Act, save and except as hereinafter provided, to wit:

(1) In any county where the number of Justices of the Peace holding office and performing the duties of such office is less than the maximum number of Justices of the Peace authorized by the Constitution of Texas, the Commissioners Courts may increase the maximum salary of the Justice or Justices so performing the duties of the offices, and of the Constable or Con-

stables serving as bailiff or bailiffs for such Justice or Justices, an additional amount not to exceed ten percent (10%) of the maximum salary applicable to such office for each such constitutionally authorized Justice of the Peace not holding such office and not performing the duties of such office, provided that under no circumstances shall any Justice of the Peace or Constable under this subsection be paid more than twenty-five percent (25%) over and above the maximum salary herein applicable to such office; except that in any county having a population of more than forty-six thousand (46,000) inhabitants according to the last preceding Federal Census and having not more than four Justices of the Peace holding office and performing the duties of such office any Justice of the Peace who is licensed to practice law in the State of Texas and who maintains in the courthouse or other county building at the county seat an office which is open for the transaction of the business of such office during the same hours as the principal offices in the courthouse of such county may be paid under this subsection not more than the following percent over and above such maximum salary herein applicable to such office, to wit: in any such county having a population of not more than ninety-eight thousand (98,000) inhabitants according to the last preceding Federal Census, forty percent (40%); in any such county having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred ninety-five thousand (195,000) inhabitants according to such census, thirty-five percent (35%); and in any such county having a population of more than one hundred ninety-five thousand (195,000) inhabitants according to such census, thirty percent (30%).

(2) In the event there are any Justices of the Peace or Constables in the State of Texas who are now being paid salaries in excess of the amount permissible under the provisions of this Act, this Act shall not be construed to require a reduction in the salaries being paid such officials so long as the present incumbents of such offices continue to hold such offices and perform the duties thereof, including both the present term for which they were elected and any terms for which they are re-elected; but in such cases, when the present incumbents of such offices vacate such offices for any reason, their successors in such offices shall receive not to exceed the maximum salaries fixed and determined in accordance with the provisions of this Act.

Fees and Commissions; Payment into County Treasury

Sec. 10. All of the fees and commissions earned and collected by the officials named in this Act shall be paid into the County Treasury in accordance with the provisions of Section 61

of Article XVI of the Constitution of Texas, except the Justices of the Peace may have and retain, in addition to the salaries fixed by the Commissioners Courts, all fees, commissions, gifts, or payments made to them for performing marriage ceremonies, for acting as registrar for the Bureau of Vital Statistics, and for acting as ex officio notary public.

Commissioners Court; Authority to be Exercised only at Regular Meetings

Sec. 11. The Commissioners Court shall not exercise the authority vested in said court by virtue of this Act, except at regular meeting of said court and after ten (10) days notice published in a paper of general circulation in the county to be affected thereby of the intended salaries to be raised and the amount of such proposed rate.

Sec. 12. [Repealed conflicting laws].

Sec. 13. [Severability provision].

Sec. 14. [Emergency clause].

#### Increase in Maximum Compensation

Sec. 15. The Commissioners Court in each county in the State is hereby authorized to increase the maximum compensation of each officer enumerated in this Act, as amended, in an additional amount not to exceed twenty percent (20%) of the maximum sum authorized by said Act, as amended; provided that no increased compensation shall be authorized pursuant to this Act except at a regular meeting of said Court following publication of notice at least two times, one time a week, in a newspaper of general circulation in such county, of the salaries intended to be raised at such meeting and the amount of such proposed raise.

[Acts 1957, 55th Leg., p. 231, ch. 110; Acts 1965, 59th Leg., p. 1287, ch. 591, § 1; Acts 1967, 60th Leg., p. 147, ch. 76, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1105, ch. 486, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1660, ch. 469, § 1, eff. May 27, 1971.]

#### Art. 3912j. Counties of 750,000 to 1,000,000; Salaries of County Road Engineers

In all counties having a population of more than 750,000 persons, and less than 1,000,000 persons, according to the last preceding federal census, the county road engineer shall receive an annual salary not to exceed \$15,000, the exact amount thereof to be determined by the Commissioners Courts of such counties, and said salary shall be paid in 12 equal monthly installments out of the road and bridge fund of such counties.

[Acts 1963, 58th Leg., p. 117, ch. 68, § 1; Acts 1967, 60th Leg., p. 803, ch. 337, § 1, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1820, ch. 542, § 15, eff. Sept. 1, 1971.]

#### Art. 3912k. County and Precinct Officials and Employees Who Are Paid Wholly From County Funds; Compensation, Expenses and Allowances

Salaries, Etc., to be Set by Commissioners Court

Sec. 1. Except as otherwise provided by this Act and subject to the limitations of this

Act, the commissioners court of each county shall fix the amount of compensation, office expense, travel expense, and all other allowances for county and precinct officials and employees who are paid wholly from county funds, but in no event shall such salaries be set lower than they exist at the effective date of this Act.

#### Elected Officers: Restrictions

Sec. 2. (a) The salaries, expenses, and other allowances of elected county and precinct officers shall be set each year during the regular budget hearing and adoption proceedings on giving notice as provided by this Act.

(b) There is hereby created in each county a salary grievance committee composed of:

(1) the county judge, who shall be chairman of the committee but who shall not be entitled to vote;

(2) the sheriff, the county tax assessor-collector, the county treasurer, the county clerk, the district clerk, and the county attorney or criminal district attorney; and

(3) three residents of the county selected as provided by Subsection (c) of this Section; or if one person holds more than one of the offices described in Subdivision (2) of this subsection or if one or more of those offices is not filled in the county, a number sufficient to establish the total voting membership of the committee at nine members.

(c) The public members of the committee shall be selected at the meeting of the commissioners court held on the second Monday in January of each year. Before that meeting, the clerk of the commissioners court shall prepare slips with a name on each slip corresponding to the names of all persons who served on grand juries in the county during the preceding calendar year. At the meeting, the slips shall be folded, placed in an appropriate receptacle, mixed, and drawn at random by the county judge until he has drawn a number equal to the number of public members required to constitute the committee. The county judge shall then announce the names on the slips drawn, and those persons shall be deemed appointed to the committee on acceptance submitted in writing to the clerk. If any person refuses or is unable to serve, a replacement shall be selected at the next regular or called meeting of the commissioners court by random selection of a slip from the remaining slips containing the names of grand jurors for the preceding year, with the process repeated as necessary to constitute the required membership of the committee. The public members of the committee shall serve for the year ending with the appointment of their successors the following January. A vacancy in the public membership of the committee shall be filled for the unexpired portion of the term by random selection of a slip from the remaining slips at a meeting of the commissioners court.

(d) Any elected county or precinct officer who is aggrieved by the setting of his salary,

expenses, or other allowance by the commissioners court may request a hearing before the committee. The request shall be in writing, shall state the manner in which he is aggrieved, and shall be delivered to the chairman of the committee. The chairman shall announce the time and place of the hearing, which shall be within 30 days after receipt of the request. If, after a hearing, the committee by a vote of six of its voting members decides to recommend a change in the salary, expenses, or other allowance of the person requesting the hearing, it shall prepare its recommendation in writing and deliver it to the commissioners court, which shall consider the recommendation at its next meeting. A written recommendation signed by all nine members and delivered to the commissioners court becomes effective without the action of the commissioners court on the first day of the month following its delivery to the commissioners court.

**Official Shorthand Reporters**

Sec. 3. (a) In addition to transcript fees, fees for statements of facts, and other expenses necessary to the office authorized by law, the official shorthand reporter of each district or domestic relations court shall be paid a salary set by order of the judge of that court; provided that such salary shall be no lower than the salary on the effective date of this Act. If a judicial district is composed of more than one county, each county shall pay a portion of the salary equal to the proportion that its population bears to the total population of the judicial district.

(b) Any increase in the salary of a shorthand reporter to become effective in 1972 or any subsequent calendar year must be ordered by the judge, and the order submitted to the commissioners court of each county in the district, not later than September 1 immediately preceding the adoption of the county budget for the following year. A commissioners court in its discretion may allow an extension of this time limit.

(c) An official shorthand reporter may not be paid a salary more than 10 percent in excess of the salary paid to him during the preceding budget year, except with the approval of the commissioners court of each county in the judicial district.

(d) A person initially appointed to succeed an official shorthand reporter may be paid a salary not to exceed the salary paid to the person he succeeds.

**Procedures Heretofore Established Unaffected**

Sec. 4. Nothing in this Act is intended to affect the lawful procedures and delegations of authority heretofore established in any county for the purpose of setting the salary of county and precinct employees.

**Fees and Commissions**

Sec. 5. All of the fees and commissions earned and collected by the officials named in this Act shall be paid into the county treasury

in accordance with the provisions of Section 61, Article XVI, of the Constitution of Texas. No provision of this Section shall apply to official shorthand reporters.

**Notice and Public Hearing Required**

Sec. 6. The commissioners court shall not exercise the authority provided by Section 2 of this Act except at regular meeting of the court and after 10 days' notice published in a paper of general circulation in the county of the intended salaries, expenses, and allowances to be raised and the amount of the proposed raises.

**Exceptions**

Sec. 7. Nothing in this Act applies to compensation, expenses, or allowances of:

- (1) district attorneys, wholly paid by state funds, or their assistants, investigators, or other employees;
- (2) persons employed under Section 10, Article 42.12, Code of Criminal Procedure, 1965, as amended;
- (3) any county auditor or his assistants or employees or any county purchasing agent or his employees or assistants;
- (4) judges of all courts of record and presiding judges of commissioners courts in counties having a population of 1,700,000 or more, according to the last preceding Federal Census.

**Repealer**

Sec. 8. To the extent that any local, special, or general law, including Acts of the 62nd Legislature, Regular Session, 1971, prescribes the compensation, office expense, travel expense, or any other allowance for any official or employee covered by this Act, that law is repealed.

**Effectiveness of Act**

Sec. 9. This Act is effective for salaries, expenses, and allowances paid beginning January 1, 1972.

**Severability Clause**

Sec. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2019, ch. 622, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 423, ch. 188, § 1, eff. May 25, 1973.]

**CHAPTER TWO. ENUMERATION**

- Article
- 3913. Certain State Officers.
  - 3914. Secretary of State.
  - 3915. Certain Foreign Corporations.
  - 3916. Disposition of Fees.
  - 3917. Attorney General.
  - 3918. Land Commissioner.
  - 3919, 3920. Repealed.
  - 3921. Banking Commissioner.
  - 3921a. Disposition of Fees and Revenues Collected by Banking Department.

## Article

3922. Railroad Commission.  
 3923. Clerk of Supreme Court; Deposits to Cover Costs.  
 3923a. Other Services by Clerk of Supreme Court; Fees; Disposition.  
 3924. Clerk of Civil Appeals.  
 3925. County Judge.  
 3926. Repealed.  
 3927. District Clerk.  
 3927a. Construction of Act.  
 3927b. District Clerks in Counties of 900,000 or More.  
 3928. Other Fees of District Clerk.  
 3928a. Disposition of and Accounting for Fees Received by District Clerk.  
 3929. Clerks Assessing Damages.  
 3930. County Clerk and County Recorders.  
 3930a. Repealed.  
 3930a-1. County Clerks and County Recorders—Other Services.  
 3930(b). County Clerks and Clerks of County Courts.  
 3931. County Clerk: Preserving Records.  
 3932. County Clerk: Ex-officio Services.  
 3933. Repealed.  
 3933a. Sheriffs and Constables in Counties Over 900,000.  
 3933a. Sheriffs and Constables.  
 3934. Sheriff: Other Compensation.  
 3935. Justice of the Peace.  
 3935a-1. Expense Allowance to Justice of Peace in Counties of 355,000 or More.  
 3936. Repealed.  
 3936a. Constables Fees in Counties of More Than 200,000 and Less Than 300,000 With City of More Than 10,000.  
 3936b. Fees of Justices of the Peace and Constables in Counties of 11,980 to 12,100.  
 3936c. Salary of Constable and Justice of the Peace in Counties of 25,500 to 26,200 Having Military Camp and City of 14,000 to 14,500.  
 3936c-1. Salary of Constable and Justice of the Peace in Counties of 145,000 to 165,000.  
 3936d. Justice of the Peace; County Containing Main Unit of Texas Prison System; Maximum Fees.  
 3936e. Justice of the Peace; Salary in Certain Counties of 23,000 to 27,000.  
 3936e-1. Justices of the Peace in Counties of 11,150 to 11,300; Compensation.  
 3936e-2. Justices of the Peace in Counties of 145,000 to 165,000; Compensation.  
 3936f. Justices of the Peace and Constables; Maximum Fees in Counties of 20,700 to 20,800.  
 3936f-1. Justices of the Peace; Maximum Fees in Counties of 67,000 to 70,000.  
 3936g. Justices of the Peace and Constables; Counties with Eight District Courts and Four County Courts.  
 3936g-1. Justices of the Peace and Constables; Counties with Nine District Courts and Five County Courts; Automobile Allowance.  
 3936h. Salaries of Justices of the Peace in Counties Containing City Over 432,000.  
 3936i. Justices of the Peace in Counties of 30,000 Containing City of 16,000.  
 3936j. Justices of the Peace and Constables; Counties Over 350,000.  
 3936k. Justices of the Peace; Increase of Compensation by Commissioners Court.  
 3937. Tax Assessor.  
 3937a. Tax Assessor in Counties Having City Over 125,000.  
 3938. Payment of Assessor.  
 3939. Tax Collector.  
 3940. Charge for One Levy Only.  
 3941. County Treasurer.  
 3942. Treasurer: Other Commissions.  
 3943. Treasurer: Commissions Limited; Increase in Compensation.

## Article

- 3943a. Additional Compensation of Treasurer in Certain Counties.  
 3943b. Compensation of Treasurer as Custodian of Road District Funds.  
 3943c. Counties of 145,000 to 300,000; County Treasurer's Compensation; Assistant.  
 3943d. Counties of 600,000 or More; County Treasurer's Compensation.  
 3943e. Salary of County Treasurer.  
 3944. County Surveyor.  
 3945. Notary Public.  
 3946. Public Weighers.  
 3946a. River Authority Directors.

## Art. 3913. Certain State Officers

The Secretary of State, Land Commissioner, Comptroller, State Treasurer, Commissioner of Agriculture, Banking Commissioner, State Librarian, and the Attorney General, shall furnish to any person who may apply for the same a copy of any paper, document or record in their respective offices, or with a certificate under seal, certifying to any fact or facts contained in the papers, documents or records of their offices unless such paper, document or record is deemed by Statute to be confidential or privileged; provided neither of said officers shall demand nor collect any fee from any officer of the state for copies of any papers, documents or records in their offices, or for any certificate in relation to any matter in their offices when such copies are required in the performance of any of the official duties of such office.

Each of said officers, and all other officers of the state and heads of state departments hereinafter required to collect fees enumerated below, shall deposit all fees received for any service named in this Article in the State Treasury to the credit of the General Revenue Fund, provided, however, that the Banking Commissioner shall deposit such fees received in the manner provided by Section 8 of Chapter 139, Acts of the 52nd Legislature, 1951,<sup>1</sup> and provided further, that the Texas Employment Commission shall deposit such fees in accordance with Federal law, and provided further, that any fees collected under this Article by the State Librarian shall be retained by the Texas Library and Historical Commission.

Each officer named above and all other officers of the state and heads of state departments shall cause to be collected the following fees for the services mentioned, except as otherwise provided by law:

For copies, other than photostatic or photo-copy, of any paper, document or record in their offices, in the English language, for each page or fraction thereof, One Dollar and Fifty Cents (\$1.50);

For copies, other than photostatic or photo-copy, of any paper, document or record in their offices in any other language than the English, for each page or fraction thereof, Two Dollars (\$2);

For each translated copy of any paper, document or record in their offices, Three



Cents (3¢) per word, provided that no charge shall be less than Five Dollars (\$5);

For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor, supplies and materials required;

For each copy by photostatic or other photo process, One Dollar (\$1) per page, provided that the State Librarian may charge a fee for this service in an amount to be determined by the Library and Historical Commission with reference to the amount of labor, supplies and materials required;

For examination or search of records in their offices when the state or any county has no interest, for each one-half (1/2) hour or fraction of one-half (1/2) hour spent in such examination or search, One Dollar (\$1).

For each sealed certificate affixed to any of the above, One Dollar (\$1).

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 449, ch. 222, § 1; Acts 1965, 59th Leg., p. 909, ch. 446, § 1.]  
1 Article 3921a.

Art. 3914. Secretary of State

The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each commission to every officer elected or appointed in this State, Two Dollars (\$2).

For each official certificate, Two Dollars (\$2).

For each warrant of requisition, Two Dollars (\$2).

For each remission of fine or forfeiture, One Dollar (\$1).

For copies of any paper, document, or record in this office, fifty cents (50¢) per legal size page.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each description of performance of such contract, Five Dollars (\$5); and for entering such declaration on the margin of the record of such contract, One Dollar (\$1).

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifty cents (50¢) per legal size page; provided such fee shall not be less than Two Dollars (\$2).

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 204, ch. 120, § 1; Acts 1961, 57th Leg., p. 463, ch. 230, § 1.]

Art. 3915. Certain Foreign Corporations

All foreign building and loan associations shall pay to the Secretary of State the follow-

ing fees: for filing each application for admission to do business in this State, fifty dollars; for each certificate of authority and annual renewal of the same, twenty-five dollars; and an annual franchise tax of two hundred and fifty dollars. The fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed one thousand dollars.

[Acts 1925, S.B. 84.]

Art. 3916. Disposition of Fees

All fees mentioned in the two preceding articles shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly.

[Acts 1925, S.B. 84.]

Art. 3917. Attorney General

The Attorney General shall be entitled to the following fees:

For each affirmance of judgment in cases to which the State may be a party involving pecuniary liabilities to the State, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the Supreme Court or Courts of Civil Appeals, twenty-five dollars.

But the whole amount of fees allowed the Attorney General shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the State Treasury.

[Acts 1925, S.B. 84.]

Art. 3918. Land Commissioner

The Land Commissioner is authorized and required to charge, for the use of the state, the following fees:

FILING FEES

Deed transferring one (1) tract of land or a decree of court relating to one (1) tract of land—for each file affected .....	\$ 3.00
Affidavit of Ownership .....	3.00
Original Field Notes .....	3.00
Relinquishment Act Oil and Gas Lease	5.00
Transfer or Release of each Mineral Award, Mineral Prospect Permit, Grazing Lease, or Mineral Lease or part thereof—for each file affected	3.00
Servicing and Filing Easement—State-owned Land .....	5.00
Servicing and Filing Grazing Lease—State-owned Land .....	1.00
Prospect Permits .....	1.00

PREPARATION OF CERTIFICATES  
OF FACT

Certificates of Facts involving examination of one (1) file .....	\$ 4.00
Each additional file .....	1.50
Each other certificate not otherwise provided for .....	3.00

CERTIFIED PHOTOSTATIC COPIES

Certificate of the class of Toby Scrip ..	2.50
All other Land Certificates .....	1.00
Applications for Survey .....	1.50
Field Notes, 2 pages or less .....	1.50
Each additional page of field notes .....	1.00
Certificate of Correction .....	1.00
Surveyors' Report—per page .....	1.00
Mineral Application .....	1.50
Vacancy Application .....	2.00
Mineral Permit or Mineral Lease .....	2.50
Purchase Application and Obligation ..	1.50
Purchase Application, surveyed land ..	1.00
Obligation for Deferred Payment on Land .....	1.00
File Wrapper .....	1.00
Proof of Occupancy .....	1.50
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument, 4 pages or less .....	2.50
Each additional page .....	1.00
Patent .....	1.50
Deed of Acquittance .....	1.50
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each .....	1.00
Other Affidavits .....	1.50
Grazing Lease Application or Contract Letters and Impressions of Letters—One page .....	1.00
Each additional page .....	.50
Extract of Muster Roll, Traveling Land Board Reports, Clerk's returns relating to Land Certificates, Patent Delivery Books, School Land Sales, records and books and other similar records, each .....	2.50
Copy of any record, document or papers in the English language not otherwise provided for herein, per page .....	1.00
Plain or certified copy of any other paper, document or record in any other language than the English—per page .....	1.00
Veterans Purchase Contract .....	2.00
Veterans Title Policy .....	1.50
Title Opinions, 2 pages or less .....	1.00
Each additional page .....	1.00

MAPS

Blue Print, White Print, or other Cloth Map of any county .....	6.00
Blue or White Print Paper Map of any county .....	3.00
Blue Print, White Print, or other Cloth Map of an inland bay .....	7.00
Blue or White Print Paper Map of an inland bay .....	3.50
Blue Print, White Print, or other Cloth Map of Gulf of Mexico .....	10.00
Blue or White Print Paper Map of Gulf of Mexico .....	\$ 5.00

Certificate on either Cloth or Paper Map Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour .....	1.00
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one (1) person or where search is necessary to compile information, minimum fee to be charged of One Dollar (\$1); and if the information is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies) .....	3.00

When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one (1) person or where search is necessary to compile information, minimum fee to be charged of One Dollar (\$1); and if the information is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies) .....	2.00
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MAPS AND SKETCHES

18" x 10"	1.00
18" x 12"	1.25
18" x 15"	1.50
18" x 20"	2.00
18" x 24"	2.50

SPANISH TRANSLATIONS

Translation of any Spanish document such as Titles and field notes, Three Cents (3¢) per word, provided that no charge shall be less than .....	5.00
Certificate of Fact concerning Spanish Titles .....	5.00

PATENT AND DEED OF ACQUITTANCE FEES

Patent Fee .....	15.00
Deed of Acquittance Fee .....	15.00
[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 18, c. 13, § 1; Acts 1955, 54th Leg., p. 1120, ch. 416, § 1; Acts 1961, 57th Leg., p. 453, ch. 225, § 1.]	

Art. 3919. Repealed by Acts 1961, 57th Leg., p. 449, ch. 222, § 2

Art. 3920. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4

Art. 3921. Banking Commissioner

The Banking Commissioner shall charge and receive the following fees:

For each application for charter for a state bank or bank and trust company, a fee applicable alike to all such applications which shall be prescribed and may be periodically adjusted by the Banking Section of the Finance Commission of Texas, shall be paid when the application is filed. For each amendment or supplement to a state bank or bank and trust company charter, a fee of One Hundred and Fifty Dollars (\$150) shall be paid when said amendment or supplement is filed, and if the amendment results in an increase in authorized capital stock of the corporation in excess of Ten Thousand Dollars (\$10,-

000) it shall be required to pay additional fee of Ten Dollars (\$10) for each additional Ten Thousand Dollars (\$10,000) or fractional part thereof of the capital increase, after the first, provided such fee shall not exceed Twenty-Five Hundred Dollars (\$2,500).

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 233, ch. 139, § 7; Acts 1969, 61st Leg., p. 883, ch. 297, § 1, eff. May 22, 1969.]

**Art. 3921a. Disposition of Fees and Revenues Collected by Banking Department**

Notwithstanding anything to the contrary contained in any other law of this State, all fees, penalties and other revenues which are collected by the Banking Department of Texas shall be retained and held by said Department, and no part of such fees, penalties and other revenues shall ever be paid into the General Revenue Fund of this State.

[Acts 1951, 52nd Leg., p. 233, ch. 139, § 8.]

**Art. 3922. Railroad Commission**

The Railroad Commission of Texas shall be authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the State government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be construed to authorize the charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by the secretary of the Railroad Commission and paid into the Treasury as provided in Article 3913.

[Acts 1925, S.B. 84.]

**Art. 3923. Clerk of Supreme Court; Deposits to Cover Costs**

(A) The Clerk of the Supreme Court shall receive the following fees and costs:

1. For the filing of records, applications, motions, briefs, and other necessary and proper papers; for the docketing and docket and minute book entries; for issuing notices, citations, processes, mandates; and for the performance of other proper and necessary clerical duties in cases before the court, he shall receive the fee set out opposite each class of the following cases:

(a) Application for writ of error .....	\$10.00
(b) If application for writ of error is granted, an additional fee of .....	25.00
(c) Motion for leave to file petition for writ of mandamus, prohibition, injunction, and other like proceedings originating in the Supreme Court .....	\$10.00

(d) If motion for leave to file petition for writ of mandamus, prohibition, injunction, certiorari, or other like proceeding be granted, an additional fee of -- 15.00

(e) Certified questions from the Court of Civil Appeals to the Supreme Court .....

(f) In cases appealed to the Supreme Court from the District Court by direct appeal --- 25.00

(g) Each and every other proceeding filed in the Supreme Court .....

2. Administering an oath or affirmation .....

3. Administering an oath or affirmation and giving certificate thereof, with seal .....

4. Making copies of any papers of record in offices, including certificate and seal, for each 100 words .20

Provided the Supreme Court may by order or rule fix a reasonable fee for any official service performed by its Clerk not otherwise provided herein.

The Supreme Court shall provide by order or rule for the making of deposits to cover the costs in cases before the court as classified above, but nothing herein shall be construed as requiring a deposit in any case in which the petitioner, relator, or appellant in the Supreme Court is exempt from the giving of a bond.

(B) The Clerk of the Supreme Court shall receive a fee of five dollars for the issuance of an attorney's license or certificate, affixed with seal. The fee so collected shall be held by the clerk and expended by the court or under its direction for the purpose of preparation and issuance, including mailing, of said license or certificate.

[Acts 1925, S.B. 84; Acts 1947, 50th Leg., p. 350, ch. 198, § 1; Acts 1971, 62nd Leg., p. 1411, ch. 390, § 1, eff. Aug. 30, 1971.]

**Art. 3923a. Other Services by Clerk of Supreme Court; Fees; Disposition**

Sec. 1. The Clerk of the Supreme Court for every service not otherwise provided by law shall receive such fees as may be allowed by the Court, not to exceed the fees allowed by law for services requiring a like amount of labor.

Sec. 2. Such fees, when collected, shall be accounted for by the Clerk, and paid into the State Treasury as provided by law for other fees collected by him.

[Acts 1939, 46th Leg., p. 328.]

**Art. 3924. Clerk of Civil Appeals**

The Clerks of the Courts of Civil Appeals shall receive the following fees:

1. For the filing of records, applications, motions, briefs and other necessary and proper papers; for the docketing and docket and minute book entries; for issuing notices, citations, processes and mandates; for preparing transcript on application for writ of error to Supreme Court of Texas;

and for the performance of other proper and necessary clerical duties in cases before the Court, they shall receive the fee set out opposite each class of the following cases:

(a) In cases appealed to and filed in the Court of Civil Appeals from the district and county courts within its Supreme Judicial District .....	\$25.00
(b) Motion for leave to file petition for writ of mandamus, prohibition, injunction and other like proceedings originating in the Court of Civil Appeals ..	10.00
(c) If motion for leave to file petition for writ of mandamus, prohibition, injunction and other like proceedings be granted, an additional fee of ..	15.00
(d) Motion to file or to extend time to file record on appeal from district or county court—if motion granted and record subsequently filed, this deposit to apply on fee provided in 1(a) .....	5.00
2. Administering an oath or affirmation .....	.50
3. Administering an oath or affirmation and giving certificate thereof with seal .....	1.00
4. Making certified copy of any papers, judgments or orders on file or of record in their offices, including certificate and seal, for each 100 words .....	.15
5. Comparing any document with the original of any papers, judgments or orders on file or of record in their offices, for purpose of certifying thereto, for each page .....	.10
6. For certificate and seal, where same is necessary .....	.50

Provided the Supreme Court may by order or rule fix a reasonable fee for any official service performed by the Clerks of the Courts of Civil Appeals not otherwise provided herein.

The Supreme Court shall provide by order or rule for the making of deposits to cover the costs in cases before the Courts of Civil Appeals as classified above, but nothing herein shall be construed as requiring a deposit in any case in which the petitioner, relator, appellant, or movant in the Courts of Civil Appeals is exempt from the giving of a bond.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 142, ch. 86, § 1.]

**Art. 3925. County Judge**

The county judge shall receive the following fees in probate matters:

Probating a will .....	\$2.00
Granting letters testamentary, of administration or of guardianship ..	.50
Each order of sale .....	.50
Each approval and confirmation of sale .....	.50

Each decree refusing order of sale, or refusing confirmation of sale ..	.50
Each decree of partition and distribution .....	2.00
Each decree approving or setting aside the report of commissioner of partition and distribution .....	2.00
Each decree removing an executor, administrator or guardian to be paid by such executor, administrator or guardian .....	\$ 1.00
Each fiat or certificate .....	.50
Each continuance .....	.10
Each order, not otherwise provided for .....	.50
Administering oath or affirmation with certificate and seal .....	.50
Administering oath or affirmation without certificate and seal .....	.25

[Acts 1925, S.B. 84.]

**Art. 3926. Repealed by Acts 1971, 62nd Leg., p. 2351, ch. 714, § 1, eff. June 8, 1971**

**Art. 3927. District Clerk**

In counties containing a population of 900,000 or less, according to the last preceding federal census, the clerks of the district courts shall receive the following fees for their services:

(1) The fees in this Subsection shall be due and payable, and shall be paid at the time suit or action is filed.

For each suit filed, including appeals from inferior courts .. \$15.00

For each cross action, intervention, contempt action or motion for new trial filed .....

\$10.00  
For issuing each subpoena, including one (1) copy thereof, when requested at the time a suit or action is filed .....

\$ 1.00  
For issuing each citation or other writ or process not otherwise provided for, including one (1) copy thereof, when requested at the time a suit or action is filed .....

\$ 4.00  
For issuing each additional copy of any process, not otherwise provided for, when requested at the time a suit or action is filed .....

\$ 2.00

(2) The fees in this Subsection shall be due and payable at the time or times of performance or request for performance of services; shall be an obligation of the party to the suit or action initiating the request, and shall be additional to the fees provided for in Subsection (1) of this Act; provided, however, that the District Clerk may accept bond or bonds as security therefor.

For issuing each subpoena not provided for in Subsection (1) including one (1) copy thereof .....

\$ 1.00

For issuing each citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, writ of sequestration not provided for in Section 1, or any other writ or process not otherwise provided for, including one (1) copy thereof when required by law ----- \$ 4.00

For issuing each additional copy of any writ or process not otherwise provided for --- \$ 2.00

For issuing certificate to any fact or facts contained in the records of his office ----- \$ 1.00

For issuing deposition each one hundred (100) words ----- \$ .20

For issuing interrogatories with certificate and seal, per page or portion thereof ----- \$ 1.00

For abstracting judgment -- \$ 2.00

For approving each bond ---- \$ 2.00

For making copy of all records, judgments, orders, pleading, or papers on file or of record in his office, whether certified or not, for any person applying for same, including the certificate and seal, per page or portion thereof ----- \$ 1.00.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 641, ch. 387, § 1; Acts 1945, 49th Leg., p. 662, ch. 368, § 3; Acts 1957, 55th Leg., p. 1293, ch. 433, § 1; Acts 1969, 61st Leg., p. 1970, ch. 667, § 1, eff. Sept. 1, 1969.]

**Art. 3927a. Construction of Act**

This Act shall not be construed as amending or repealing any existing law concerning the exemption of the State of Texas or any political subdivision of the State of Texas from liability for costs or deposits therefor.

[Acts 1957, 55th Leg., p. 1293, ch. 433, § 2.]

**Art. 3927b. District Clerks in Counties of 900,000 or More**

In counties containing a population in excess of 900,000 inhabitants according to the last preceding federal census, the clerks of the district courts shall receive the following fees for their services:

(1) The fees in this Subsection shall be due and payable, and shall be paid at the time suit or action is filed.

For each suit filed, including appeals from interior courts --- \$15.00

For each cross action, intervention, contempt action or motion for new trial filed ----- \$10.00

For issuing each subpoena, including one copy thereof, when requested at the time a suit or action is filed ----- \$ 1.00

For issuing each citation or other writ or process not otherwise provided for, including one copy thereof, when requested at the time a suit or action is filed \$ 4.00

For issuing each additional copy of any process, not otherwise provided for, when requested at the time a suit or action is filed ----- \$ 2.00

(2) The fees in this Subsection shall be due and payable at the time or times of performance or request for performance of services; shall be an obligation of the person initiating the request, and shall be additional to the fees provided for in Subsection (1) of this Act; provided, however, that the District Clerk may accept bond or bonds as security therefor.

For issuing each subpoena not provided for in Subsection (1), including one copy thereof \$ 1.00

For issuing each citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, writ of sequestration not provided for in Section 1, or any other writ or process not otherwise provided for, including one copy thereof when required by law ----- \$ 4.00

For issuing each additional copy of any writ or process not otherwise provided for ----- \$ 2.00

For searching the files or records:

a. To locate any one cause when the person requesting same does not furnish the docket number of said cause, or

b. To ascertain the existence or nonexistence of any instrument or record in his office ----- \$ 5.00

For issuing certificate to any fact or facts contained in the records of his office ----- \$ 1.00

For taking deposition, each 100 words ----- \$ .20

For issuing interrogatories with certificate and seal, per page or portion thereof ----- \$ 1.00

For abstracting judgment --- \$ 2.00

For approving each bond ---- \$ 2.00

For making copy of all records, judgments, orders, pleading, or papers on file or of record in his office, whether certified or not, for any person applying for same, including the certificate and seal, per page or portion thereof ----- \$ 1.00

[Acts 1965, 59th Leg., p. 1288, ch. 592; Acts 1967, 60th Leg., p. 961, ch. 423, § 1, eff. Aug. 28, 1967.]

**Art. 3928. Other Fees of District Clerk**

The District Clerk shall also receive the following fees:

1. Whenever in any suit a certified or uncertified copy of any petition or any

other instrument, judgment or order is necessary in the District Court, it shall be lawful for the plaintiff or defendant to prepare such copy and submit the same to the District Clerk, who shall be entitled to a fee of Ten (10¢) Cents per 300 words to the page, for his services in comparing same with the original. If a certified copy is necessary, he shall attach his certificate of true copy, and for such service he shall receive One (\$1.00) Dollar for each certificate and seal.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the District Court he shall receive the same fees that are allowed therefor to County Clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the County Treasury on the order of the Commissioners' Court, such sum as said Court shall determine.

4. For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by the Legislature, reasonable fees shall be charged.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 641, ch. 387, § 2; Acts 1973, 63rd Leg., p. 1634, ch. 593, § 1, eff. Aug. 27, 1973.]

**Art. 3928a. Disposition of and Accounting for Fees Received by District Clerk**

In those counties where the District Clerk is compensated on a fee basis, the Clerk shall receive such fees and account for such as fees of office; and in those counties where the District Clerk is compensated on a salary basis, such fees shall be collected and paid into the officer's salary fund as now or hereafter provided by law.

[Acts 1941, 47th Leg., p. 641, ch. 387, § 3.]

**Art. 3929. Clerks Assessing Damages**

No district or county clerk shall receive any compensation for assessing damages in any case.

[Acts 1925, S.B. 84.]

**Art. 3930. County Clerk and County Recorders**

County clerks and county recorders are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

**Fees for County Clerk and County Recorder Records and Miscellaneous Services**

(1) For filing, or filing and registering, including indexing, each instrument, document, legal paper, or record (excepting notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, and those

instruments, documents, legal papers and records filed and recorded in the real property records in the office of the county clerk, and those instruments the filing fee for which are fixed in the Uniform Commercial Code), authorized, permitted, or required, to be filed, or filed and registered, in the personal property, chattels and personal records in the office of the county clerk and county recorder, a fee or fees, as follows:

(a) For each such instrument, document, legal paper, or record, a fee, which shall be in addition to any and all specific fee or fees provided for in any and all other statute or statutes, of ----- \$ 2.00

(2) For filing and recording, including indexing not more than twenty (20) names, each instrument, document, legal paper, or record (excepting map records, condominium records, notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, or in the personal property, chattels and personal records in the office of the County Clerk) authorized, permitted, or required, to be filed and recorded in the real property records in the office of the county clerk and county recorder, a fee, or fees, as follows, which fee, or fees, shall be in addition to any specific fee, or fees, provided for in any other statute, or statutes:

(a) For the first page, a fee of ----- \$ 1.50

(b) Plus, for each additional page, or part of a page, on which there are visible marks of any kind, a fee of ----- \$ 1.00

(c) Plus a fee for each 8½" x 14", or part thereof, of attachment or rider, to be charged for each such attachment or rider, of ----- \$ 1.00

(d) Plus, for each additional name that has to be indexed in excess of a total of twenty (20) names indexed for all records in which an instrument, document, paper or record must be indexed, a fee of ----- \$ 0.20

(e) Provided, however, that in the absence of a statute prescribing minimum specifications for legal instruments, documents and papers to be filed, or filed and registered, or filed and recorded for the fees prescribed in this Act, a county clerk and county recorder in his discretion may substitute, in lieu of the per page fee prescribed by this Act, for each page of such a legal instrument, document or paper

having more than 500 words on it, a fee per one hundred words of ----- \$ 0.20

(3) For issuing each certified copy (except certified copy of map records and condominium records), notice, statement, license where the fee for issuing the license is not specifically provided by statute, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or county recorder, except as otherwise provided in Section 1, of this Act:

For each page, or part of a page, a fee, to be paid in cash at the time each order is placed, of ----- \$ 1.00

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

(4) For issuing each certified copy of birth certificate or death certificate a fee of ----- \$ 1.00

(5) For approving bond, except notarial bonds and bonds required to be approved in County Civil Courts, County Criminal Courts and Probate Courts, a fee, to be paid at the time of said approval, of ----- \$ 3.00

(6) For all clerical work in having appointment of notary public made, administering oaths and qualifying the notary public, and approving, filing and recording notarial bond, a fee (does not include the fee for the Secretary of State), to be paid at the time the executed oath and bond is filed, of ----- \$ 2.00

(7) For issuing each marriage license, including all and every service relating thereto and including, but not limited to, preparing the application, filing health certificates, administering oaths, filing waivers and orders of county judge, issuing license and recording all papers including the return of the license, a total fee, to be paid at the time the license is issued, of ----- \$ 5.00

(8) For administering each oath, with or without a seal of clerk, except oaths required to be administered in duties as Clerk of County Civil Courts, County Criminal Courts and Probate Courts, a fee of \$ 1.00

(9) For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by this Act, reasonable fees shall be charged.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 662, ch. 368, § 5; Acts 1957, 55th Leg., p. 477, ch. 228; Acts 1967, 60th Leg., p. 1789, ch. 681, § 1, eff. Aug. 28, 1967.]

**Repeal of Fee Provisions**

Acts 1967, 60th Leg., p. 1789, ch. 681, § 2 provided: "Article 3930a, Revised Civil Statutes of Texas, 1925, as added by Section 1, Chapter 495, Acts of the 57th Legislature, Regular Session, 1961, is repealed; and the fees provided for County Clerks in all other laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed as to County Clerks only, including but not limited to: Section 10(b), Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a-10, Vernon's Texas Civil Statutes); Sections 1 through 7, Chapter 465, Acts of the 44th Legislature, 2nd Called Session, 1935, as amended (Article 3912e, Vernon's Texas Civil Statutes); Subsection D, Section 18, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Rule 51aD, Article 4477, Vernon's Texas Civil Statutes); Article 4524, Revised Civil Statutes of Texas, 1925; Article 4546, Revised Civil Statutes of Texas, 1925, as amended; Article 4562, Revised Civil Statutes of Texas, 1925, as amended; Article 5333, Revised Civil Statutes of Texas, 1925; Section 4 and 4b, Chapter 85, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 5506a, Vernon's Texas Civil Statutes); Article 5926, Revised Civil Statutes of Texas, 1925; Article 6636, Revised Civil Statutes of Texas, 1925, as amended; Article 6641, Revised Civil Statutes of Texas, 1925; Article 6644, Revised Civil Statutes of Texas, 1925, as amended; Section 9, Chapter 48, Acts of the 48th Legislature, Regular Session, 1943 (Article 6899-1, Vernon's Texas Civil Statutes); Article 6927, Revised Civil Statutes of Texas, 1925; Article 7328, Revised Civil Statutes of Texas, 1925, as amended; Section 12, Chapter 506, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 7345b, Vernon's Texas Civil Statutes); Article 7362, Revised Civil Statutes of Texas, 1925; Section 1, Chapter 15, page 243, General Laws, Acts of the 46th Legislature, Regular Session, 1939 (Article 7363a, Vernon's Texas Civil Statutes); and Article 7517, Revised Civil Statutes of Texas, 1925."

Art. 3930a. Repealed by Acts 1967, 60th Leg., p. 1788, ch. 680, § 2, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1790, ch. 681, § 2, eff. Aug. 28, 1967

**Art. 3930a-1. County Clerks and County Recorders—Other Services**

(1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives. Unless otherwise specified, each fee shall be collected at the time the service is rendered.

(2) A total fee of \$5 shall be collected for services rendered in connection with the execution of each declaration of informal marriage under Section 1.92 of the Family Code.

[Acts 1969, 61st Leg., p. 2707, ch. 888, § 5, eff. Jan. 1, 1970.]

**Art. 3930(b). County Clerks and Clerks of County Courts**

Sec. 1. County clerks and clerks of county courts are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

**A. Fees for County Civil Court Dockets**

(1) For each cause or action, or docket in County Civil Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, executions while the docket is still open, garnishments before judgments, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded; for all attendances in court as clerk of court; for impaneling a jury; for swearing witnesses; for approving bonds involved in court actions, for administering oaths; and for all other clerical duties in connection with such county civil court docket:

(a) For each original cause or suit in a County Civil Court, including, but not limited to, appeals from Justice of the Peace Courts or Corporation Courts and transfers of causes or suits from other jurisdictions, a fee to be due and payable, and to be paid by the plaintiff or plaintiffs, or appellant or appellants, at the time said cause or suit is filed, started or initiated, which fee is to be paid but one time in each cause or docket, or suit, and which fee excludes the items listed in

Paragraphs B, C, D, and E of this Section 1:

(i) For causes or dockets involving damages, debts, specific performance of contracts and agreements, pleas of privilege, appeals from Justice of the Peace Courts and Corporation courts, for appeals from driver's license suspension, and other causes of action not otherwise listed in this Paragraph A(1)(a): a fee of ----- \$10.00

(ii) For eminent domain, or condemnation proceedings, with or without objections: a fee of ----- \$25.00

(iii) For garnishments after judgment: a fee of ----- \$ 7.50

(d) For each interpleading, or cross-action, or any other action other than the original action, in a cause or suit in a County Civil Court, a fee to be due and payable, and to be paid by the party or parties starting or initiating each such interpleading, or other action, or cross-action, at the time of starting or initiating each such cross-action or interpleading, or other action, which fee is to be paid but one time for each such cross-action, or interpleading, or other action, but excluding items listed in Paragraphs B, C, D and E of this Section 1: a fee of ----- \$10.00

**B. Fees for Probate Court Dockets**

(1) For each cause or action, or docket in Probate Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, wills, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents, or papers authorized, permitted or required to be issued by said county clerk or said clerk of probate courts on which a return must be recorded; for all attendances in court as clerk of court; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such probate court docket:

(a) For each original cause or action in a Probate Court, a fee to be due and payable and to be paid by the party or parties starting or initiating said cause or estate action, or with the permission of the court, payable at the time of qualifying of the legal or per-



sonal representative of such cause or estate action, or when a Veterans' Administration Chief Attorney is attorney of record in a cause, payable when the legal or personal representative of such cause or estate action receives funds with which to make such payment, for such services for the period of time as shown, and which fee excludes the items listed in Paragraphs A, B(1)(b), B(1)(d), C, D and E of this Section 1:

(i) For probating will with independent executor; for administration with will attached, for administration of an estate, for guardianship or receivership of an estate, for muniment of title, a fee for one year from the starting or initiating such cause of action: a fee of \$25.00

(ii) For community survivors: a total fee of \$20.00

(iii) For small estates: a total fee of \$ 5.00

(iv) For affidavits of heirship, including filing of affidavit, after approval by Judge, in Small Estates Records in the Recorder's Office: a total fee of \$ 7.50

(v) For mentally ill: Total costs for all services listed in Article 5547—13, Article 5547—14 and Article 5547—15, Vernon's Civil Statutes of Texas, shall be in the amount of \$40.00

(b) For each probate docket remaining open after its first anniversary date, the following fees shall be paid in cash at the time earned, which fee shall be separate and apart from other fees listed in Paragraphs A, B, C, D and E of this Section 1 hereof:

(i) For filing, or filing and recording, of each instrument of writing, legal document, paper or record in an open Probate Docket after its first anniversary date: a fee of \$ 2.00

(ii) For approving and recording each bond relating only to an open Probate Docket after said Docket's first anniversary date, a fee of \$ 3.00

(iii) For administering each oath relating to an open Probate Docket after said Docket's first anniversary date, a fee of \$ 1.00

(c) For each adverse action or contest, other than the filing of a claim against an estate, in a clause or docket in a probate court, a fee to be due and payable and to be paid by the party or parties starting or initiating such adverse action or contest, but exclud-

ing other items listed in Paragraphs A, B, C and D of this Section 1, of \$25.00

(b) For filing and entering each claim against an estate in the claim docket, a fee, to be paid by claimant at the time of filing such claim, of \$ 1.00

C. Where no cause is pending, as is contemplated in Section 1, Paragraphs A and B hereof, the clerk shall charge as follows for the hereinafter listed services, for issuing (including recording of the returns thereon), each citation, notice, commission to take depositions, execution, order, writ, process, or any other instrument, document, or paper authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded:

(i) For issuing each such instrument, document, or paper, including the original and one copy and the recording of the return, a fee, to be paid at the time each order is placed, of \$ 3.00

(ii) For issuing for the same docket at the same time more than one set of one original and one copy of the same instrument, document, or paper, including recording the return thereon, a fee, per set, to be paid at the time the order is placed, of \$ 2.50

D. For issuing each certificate, certified copy, notice, statement, transcript, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts on which there is no return to be recorded:

For each page, or part of a page, a fee, to be paid at the time each order is placed, of \$ 1.00.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings, and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

E. For issuing each Letter Testamentary, Letter of Guardianship, Letter of Administration and each Abstract of Judgment a fee of \$ 1.00

F. For filing and keeping "Wills Held for Safekeeping", a fee, to be paid at the time said wills are filed, of \$ 3.00

Sec. 2. If the final judgment has not been entered for a docket, or cause, in a county civil court on the date this Act becomes effective, the amount of costs for such docket, or cause, accruing to such effective date shall be paid in full before final judgment is filed or recorded, and no further costs shall accrue in each such docket, or cause, after said effective date, except that the fees specified in Paragraphs A(1)(a)(iii), A(1)(b), C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to each of such dockets, or such causes, and shall be paid in accordance with the provisions of said paragraphs. If the final judgment has not been entered for a docket, or cause, or estate action, in a probate court on the date this Act becomes effective, the amount of costs for such docket, or cause, or estate action, accruing to such effective date shall be paid in full, and no further costs shall accrue, prior to the next anniversary date of such docket, or cause, or estate action, except that the fees specified in Section 1, Paragraphs B(1)(b), B(1)(c), B(1)(d), and C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to such dockets, or such causes, or such estate actions, and shall be paid in accordance with the provisions of said paragraphs. Any deposit balance or balances left after applying all costs accrued through the date this Act becomes effective, including the adjustments stipulated hereinabove, for a docket, or cause, shall be refunded without delay and all further fees and charges shall be paid for at the time of filing, or issuing, or otherwise becoming due and payable. Said clerk shall continue to collect, at the time said fees or costs accrue, or are earned, or are payable, all fees, or costs, authorized, or required, to be collected by said clerk, including, but not limited to: law library fees, county judge's fees, county judge's commissions, jury fees, and fees for state officials.

[Acts 1967, 60th Leg., p. 1785, ch. 680, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 1785, ch. 680, §§ 2, 3 provided: "Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of conflict only, including but not limited to Article 3930a, Revised Civil Statutes of Texas, 1925; and Sections 13, 14, and 15, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Articles 5547-13, 5547-14, and 5547-15, Vernon's Texas Civil Statutes).

"Sec. 3. If any provision, or provisions, of this Act or the application thereof to any person, or circumstances, is held invalid, such invalidity shall not affect other provisions, or applications, of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 3931. County Clerk: Preserving Records

At each term of his court the county judge shall inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court in the care and preservation of the records of his office, in making and keeping necessary indexes thereto, and other labor of a like class, and allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annual-

ly, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge.

[Acts 1925, S.B. 84.]

#### Art. 3932. County Clerk: Ex-officio Services

For all ex-officio services in relation to roads, bridges and ferries, issuing jury script, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping records of trust funds, filing and docketing all papers for Commissioners' Court, keeping road overseers' books and list of hands, recording all collection returns of delinquent insolvents, recording county treasurer's reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for to be paid upon the order of the Commissioners' Court out of the treasury, the county clerk shall receive such sum as the Commissioners' Court may determine under the provisions of Article 3895, to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until the payment or tender of payment of all legal fees for such filing or recording has been made. Nothing herein shall be held to include papers or instruments filed or recorded in suits pending in the county court.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 6.]

#### Art. 3933. Repealed by Acts 1967, 60th Leg., p. 1811, ch. 693, § 2, eff. June 17, 1967

#### Art. 3933a. Sheriffs and Constables in Counties Over 900,000

[Text of article amended by Acts 1967, 60th Leg., p. 1073, ch. 467, § 1.]

In counties containing a population in excess of nine hundred thousand (900,000) inhabitants, according to the last preceding Federal Census, Sheriffs and Constables shall receive the following fees:

For each person, corporation or legal entity, on whom service of citation, subpoena, summons, or process not otherwise provided for, is performed or attempted, and return made, including mileage, if any, a fee of ----- \$ 4.00

For executing or attempting to execute each writ of garnishment, injunction writ, distress warrant, writ of attachment, writ of sequestration, writ of execution, order of sale, writ of execution and order of sale, or writ not otherwise provided for, and making return thereon, including mileage, if any, a fee of ---- \$ 4.00

For posting written notices in public places, as may be required by law, a fee for posting each location including mileage, if any ----- \$ 1.00

For the taking and approving of bonds as may be required by law, and returning same to the court as may be required, a fee of ----- \$ 2.00

For each case tried in District or County Court, a jury fee of ----- \$ .50

For executing a deed to each purchaser of real estate under execution or order of sale, a fee of ----- \$ 2.00

For executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser, a fee of ----- \$ 2.00

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, six percent (6%); for the second One Hundred Dollars (\$100), three percent (3%); for all sums over Two Hundred Dollars (\$200) and not exceeding One Thousand Dollars (\$1,000), two percent (2%); for all sums over One Thousand Dollars (\$1,000) and not exceeding Five Thousand Dollars (\$5,000) one percent (1%); for all sums over Five Thousand Dollars (\$5,000), one-half (1/2) of one percent (1%).

When the money is collected by the Sheriff or Constable without a sale, one-half (1/2) of the above rates shall be allowed him.

[Acts 1965, 59th Leg., p. 1626, ch. 696; Acts 1967, 60th Leg., p. 1072, ch. 467, § 1, eff. Aug. 28, 1967.]

Section 2 of the amendatory act of 1967 provided: "If any provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

**Art. 3933a. Sheriffs and Constables**

[Text of article amended by Acts 1967, 60th Leg., p. 1810, ch. 693, § 1.]

Sheriffs and Constables shall receive the following fees:

For each person, corporation or legal entity, on whom service of citation, subpoena, summons, or process not otherwise provided for, is performed or attempted, and return made, including mileage, if any, a fee of

- (a) Justice Courts ----- \$ 2.00
- (b) All other Courts ----- \$ 4.00

For executing or attempting to execute each writ of garnishment, injunction writ, distress warrant, writ of attachment, writ of sequestration, writ of execution, order of sale, writ of execution and order of sale, or writ not otherwise provided for, and making return thereon including mileage, if any, a fee of

- (a) Justice Courts ----- \$ 2.00
- (b) All other Courts ----- \$ 4.00

For posting written notices in public places, as may be required by law, a fee for posting each location including mileage, if any ----- \$ 1.00

For the taking and approving of bonds as may be required by law,

and returning same to the court as may be required, a fee of ----- \$ 2.00

For each case tried in District or County Court, a jury fee of ----- \$ .50

For executing a deed to each purchaser of real estate under execution or order of sale, a fee of ----- \$ 2.00

For executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser a fee of ----- \$ 2.00

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, six percent (6%); for the second One Hundred Dollars (\$100), three percent (3%); for all sums over Two Hundred Dollars (\$200) and not exceeding One Thousand Dollars (\$1,000), two percent (2%); for all sums over One Thousand Dollars (\$1,000) and not exceeding Five Thousand Dollars (\$5,000), one percent (1%); for all sums over Five Thousand Dollars (\$5,000), one-half (1/2) of one percent (1%).

When the money is collected by the Sheriff or Constable without a sale, one-half (1/2) of the above rates shall be allowed him.

[Acts 1965, 59th Leg., p. 1626, ch. 696; Acts 1967, 60th Leg., p. 1810, ch. 693, § 1, eff. June 17, 1967.]

Section 2 of the act of 1967 provided: "Article 3933, Revised Civil Statutes of Texas, 1925, as amended, is repealed."

**Art. 3934. Sheriff: Other Compensation**

Sheriffs shall also receive the following compensation:

1. For all process issued from the Supreme Court or Courts of Civil Appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

2. Repealed by Acts 1945, 49th Leg., p. 244, ch. 179, § 4.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 244, ch. 179, § 4.]

**Art. 3935. Justice of the Peace**

Justices of the peace shall receive the following fees:

- Each citation ----- \$ 1.00
- Each subpoena for one witness -- .25
- Each additional name inserted in a subpoena ----- .10
- Docketing each cause ----- .20
- Filing each paper ----- .10
- Each continuance ----- .10
- Each bond not otherwise provided for ----- .50
- Swearing each witness in Court -- .10
- Administering an oath without a certificate ----- .10
- Administering an oath with certificate ----- .50
- Administering the oath, approving bond and issuing a writ of attachment or sequestration ----- 1.50

Issuing any other writ or process not otherwise provided for	-----	\$1.00
Causing a jury to be summoned and swearing them	-----	.25
Receiving and recording verdict of jury	-----	.25
Each order in a cause not otherwise provided for	-----	.50
Each final judgment	-----	1.00
Each abstract of judgment	-----	.75
Each application to set aside a judgment or for a new trial, with the final judgment thereon	-----	.50
Each appeal bond	-----	1.00
Each commission to take depositions	-----	.50
Copy of interrogatories or cross-interrogatories, for each 100 words including certificate	-----	.15
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper Court, in each case of appeal or certiorari	-----	1.50
Each execution or order of sale	-----	1.00
Each writ of possession or restitution	-----	1.00
Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed	-----	.50
If no levy is returned or the writ not executed	-----	.25
Making copies of any papers or records in his office for any person applying for the same, for each 100 words including certificate	-----	.15
Taxing costs, including copy thereof, in each case	-----	.25
Each certificate not otherwise provided for	-----	.50
Taking acknowledgment for stay of judgment	-----	.50

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 666, ch. 368, § 6.]

**Art. 3935a-1. Expense Allowance to Justice of Peace in Counties of 355,000 or More**

In all counties containing a population of three hundred and fifty-five thousand (355,000) or more inhabitants, according to the last preceding Federal Census, the Commissioners Court of each of such counties may make a reasonable allowance, not to exceed Fifty Dollars (\$50) a month, for the operation of the automobiles in connection with his official duties, to be paid from the General Fund of each of such counties to each Justice of the Peace, whose courtroom is located in the county courthouse at the county seat of each of such counties, in addition to any and all other expenses now authorized by law to be defrayed by such counties for such Justices of the Peace.

[Acts 1939, 46th Leg., Spec.Laws, p. 752, § 1.]

**Art. 3936. Repealed by Acts 1937, 45th Leg., p. 437, ch. 224, § 2**

**Art. 3936a. Constables Fees in Counties of More Than 200,000 and Less Than 300,000 With City of More Than 10,000**

Constables whose precincts lie in counties having a population of more than 200,000 and less than 300,000 by the last preceding Federal Census, and whose precincts lie in whole or in part in an incorporated city or town having a population of more than 10,000 by the last preceding Federal Census, who execute process and perform services in civil and criminal actions shall receive the same fees allowed to Sheriffs for the same services, and provided further that like fees shall be paid by the county in all criminal cases where the defendant is convicted or pleads guilty; and such Constable shall present to the Commissioners' Court of his county a written account specifying each criminal action in which he claims such fee, certified to by the Justice of the Peace to be correct and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they may find to be correct and order a draft to be issued upon the County Treasurer in favor of such Constable for the amount so approved.

[Acts 1935, 44th Leg., p. 421, ch. 170, § 1.]

**Art. 3936b. Fees of Justices of the Peace and Constables in Counties of 11,980 to 12,100**

In counties containing not less than eleven thousand, nine hundred and eighty (11,980) inhabitants, and not more than twelve thousand, one hundred (12,100) inhabitants, according to the last preceding Federal Census, the Justices of the Peace and Constables in such counties may retain annual fees to the amount of One Thousand, Five Hundred Dollars (\$1,500); provided that if the current fees of such Justices of the Peace and Constables collected in any year be more than the amount needed to pay the amounts above specified, the same shall be deemed excess fees and shall be disposed of as follows: Said Justices of the Peace and Constables shall retain one-third of such excess fees until such one-third, together with the amount hereinabove specified, amounts to the sum of One Thousand, Eight Hundred Dollars (\$1,800).

[Acts 1937, 45th Leg., p. 172, ch. 88, § 1.]

**Art. 3936c. Salary of Constable and Justice of the Peace in Counties of 25,500 to 26,200 Having Military Camp and City of 14,000 to 14,500**

From and after the effective date of this Act in all counties in this State having a population of not less than twenty-five thousand, five hundred (25,500) and not more than twenty-six thousand, two hundred (26,200), and containing a city having a population of not less than fourteen thousand (14,000) and not more than fourteen thousand, five hundred (14,500), according to the last preceding Federal Census,

within the boundaries of which is located a military camp, the salary of the constable and justice of peace shall each be not less than Twenty-seven Hundred Dollars (\$2700) plus one-third of all fees collected above such amount. The salary of each shall be paid in the manner and in accordance with existing laws governing the office of justice of peace and constable.

[Acts 1941, 47th Leg., p. 440, ch. 273, § 1.]

**Art. 3936c-1. Salary of Constable and Justice of the Peace in Counties of 145,000 to 165,000**

The Commissioners Court of any county having a population of not less than 145,000 nor more than 165,000, according to the last preceding federal census, shall set the salary of the justices of the peace and constables in the county at not more than \$15,000 each per year.

[Acts 1971, 62nd Leg., 1st C.S., p. 26, ch. 6, § 1, eff. Sept. 3, 1971.]

Section 2 of the 1971 act provided: "As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general State and local governmental purposes."

**Art. 3936d. Justice of the Peace; County Containing Main Unit of Texas Prison System; Maximum Fees**

Hereafter in any county in the State of Texas, where the main unit of the Texas Prison System is located, the Justice of the Peace shall be allowed to retain sufficient fees of office, provided said office makes the same, until said fees reach the sum of Two Thousand, Five Hundred Dollars (\$2,500) per year, and in the event that said fees of office of said Justice of the Peace reach the sum of Two Thousand, Five Hundred Dollars (\$2,500), he shall not be entitled to any excess fees.

[Acts 1947, 50th Leg., p. 459, ch. 260, § 1.]

**Art. 3936e. Justice of the Peace; Salary in Certain Counties of 23,000 to 27,000**

Sec. 1. In all counties having a population of not less than twenty-three thousand (23,000) and not more than twenty-seven thousand (27,000), according to the last preceding Federal Census, and having one or more cities with a population of not less than eleven thousand (11,000) according to said last preceding Federal Census, and which county has an assessed valuation for ad valorem tax purposes for the preceding year of not less than Twenty-five Million Dollars (\$25,000,000) according to the tax rolls of said county; and where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments. In precincts where the election of two (2) Justices of the Peace is authorized by Law said annual salary of Justices of the Peace shall not exceed Two Thousand,

Four Hundred Dollars (\$2,400); and in such precincts in such counties where the election of two (2) Justices of the Peace is authorized by Law, but where there is only one Justice of the Peace acting, the annual salary of such Justice of the Peace shall be fixed by said Commissioners Court not to exceed Three Thousand, Six Hundred Dollars (\$3,600).

Sec. 2. In addition to the said salary which may be allowed as provided in the preceding Section, such Justice of the Peace shall have and retain as unaccountable fees, all fees, commissions or payments for performing marriage ceremonies, and for acting as Registrar for the Board of Vital Statistics, and for acting as ex-officio notary public.

[Acts 1947, 50th Leg., p. 482, ch. 279.]

**Art. 3936e-1. Justices of the Peace in Counties of 11,150 to 11,300; Compensation**

In all counties in the State of Texas containing more than 11,150 inhabitants but less than 11,300 inhabitants, according to the last preceding federal census, the Commissioners Court may pay to the justices of the peace a maximum compensation not to exceed the amount fixed in Section 1, Chapter 427, Acts of the 54th Legislature, 1955, as amended.<sup>1</sup>

[Acts 1967, 60th Leg., p. 2074, ch. 776, § 1, eff. June 18, 1967; Acts 1971, 62nd Leg., p. 1837, ch. 542, § 86, eff. Sept. 1, 1971.]

<sup>1</sup> Article 3883i.

**Art. 3936e-2. Justices of the Peace in Counties of 145,000 to 165,000; Compensation**

The commissioners court of any county having a population of not less than 145,000 nor more than 165,000, according to the last preceding federal census, shall set the salary of the justices of the peace in the county at not more than \$15,000 each per year.

[Acts 1971, 62nd Leg., p. 1624, ch. 451, § 1, eff. Aug. 30, 1971.]

Section 2 of the 1971 act provided: "As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

**Art. 3936f. Justices of the Peace and Constables; Maximum Fees in Counties of 20,700 to 20,800**

Sec. 1. The maximum annual fees that may be retained by Justices of Peace and the Constables in counties containing more than twenty thousand, seven hundred (20,700) inhabitants and less than twenty thousand, eight hundred (20,800) inhabitants, according to the last preceding Federal Census, shall be for Justices of Peace Two Thousand, Four Hundred Dollars (\$2,400), and for Constables Two Thousand, Four Hundred Dollars (\$2,400), provided that in addition to said fees that may be retained by said officers, they may be allowed expenses, including office expenses, stenographic help and traveling expenses, not to exceed Six Hundred Dollars (\$600) for each of

said officers, as may be fixed by the Commissioners Court of such county.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict, but it is not the intention of this Act to change or amend the law pertaining to any officers other than as stated herein, and this Act shall apply only to the certain counties as herein specified.

[Acts 1947, 50th Leg., p. 958, ch. 412.]

**Art. 3936f-1. Justices of the Peace; Maximum Fees in Counties of 67,000 to 70,000**

Sec. 1. In all counties of this State having a population of at least sixty-seven thousand (67,000) but not more than seventy thousand (70,000), according to the last preceding federal census, justices of the peace shall receive maximum fees of Four Thousand, Nine Hundred Dollars (\$4,900) each per year.

Sec. 2. The Commissioners Court is hereby authorized and it shall be their duty to see that all justices of the peace can collect and keep on a fee basis, Four Thousand, Nine Hundred Dollars (\$4,900) per year, other fees exceeding this amount to be turned over to the county to be credited to the Road and Bridge Fund of that county.

[Acts 1961, 56th Leg., p. 1138, ch. 516; Acts 1971, 62nd Leg., p. 1820, ch. 542, § 17, eff. Sept. 1, 1971.]

**Art. 3936g. Justices of the Peace and Constables; Counties with Eight District Courts and Four County Courts**

In all counties in the State of Texas having at least eight (8) District Courts, at least two (2) of which are Criminal District Courts, and at least four (4) County Courts, at least two (2) of which are County Courts at Law and at least one (1) is a County Criminal Court, the salaries of all constables and justices of the peace shall be fixed by the Commissioners Court of such counties at any amount not to exceed Six Thousand, Five Hundred Dollars (\$6,500) per annum. Such salaries to be paid out of the General Fund of the county. Provided further that the salaries of the constables and justices of the peace of Precincts 1 and 7 in such counties shall not be less than Four Thousand, Seven Hundred and Fifty Dollars (\$4,750).

[Acts 1949, 51st Leg., p. 233, ch. 130, § 1.]

**Art. 3936g-1. Justices of the Peace and Constables; Counties with Nine District Courts and Five County Courts; Automobile Allowance**

In all counties in the State of Texas having at least nine (9) district courts, at least two (2) of which are criminal district courts, and at least five (5) county courts, at least two (2) of which are county courts-at-law and at least two (2) of which are county criminal courts, the Commissioners Court of such county shall allow the Justices of the Peace and Constables of such counties, whose precincts lie wholly or in part in cities having a population of more

than four hundred and thirty-two thousand (432,000) inhabitants in such counties, according to the last preceding Federal Census, and all Investigators for the District Attorney in such counties, automobile expense allowance an amount to be determined by the Commissioners Court in each of said counties, payable each month out of the General Fund of the county. [Acts 1951, 52nd Leg., p. 239, ch. 140, § 1.]

**Art. 3936h. Salaries of Justices of the Peace in Counties Containing City Over 432,000**

In all counties of this State in which there is situated a city having a population in excess of four hundred and thirty-two thousand (432,000) inhabitants, according to the last preceding Federal Census, and in which the justices of the peace and constables are compensated on a salary basis, the Commissioners Courts of such counties shall fix the salaries of the justices of the peace and constables in justice precincts which are situated in or include a city or a part thereof, having a population in excess of four hundred and thirty-two thousand (432,000) inhabitants according to the last preceding Federal Census, at not less than Four Thousand, Five Hundred Dollars (\$4,500) and not more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum. Said salaries shall be paid in twelve (12) monthly installments, provided, however, that the salaries of the justices of the peace and constables from the effective date of this Act for the remainder of the year 1951 shall be paid in the same ratio basis as the remainder of the year bears to the total annual salaries provided herein, and shall be paid in monthly installments.

[Acts 1949, 51st Leg., p. 571, ch. 308, § 1; Acts 1951, 52nd Leg., p. 354, ch. 222, § 1.]

**Art. 3936i. Justices of the Peace in Counties of 30,000 Containing City of 16,000**

Sec. 1. In all counties having a population of not less than thirty thousand (30,000) according to the last preceding Federal Census, and having an assessed valuation for ad valorem tax purposes for the preceding year of not less than Forty Million Dollars (\$40,000,000) according to the tax rolls of said counties, where it shall have been determined that Justices of the Peace shall be compensated on a salary basis, and where there is only one (1) Justice of the Peace acting in any precinct in which there may be a city of sixteen thousand (16,000) or more inhabitants according to the last preceding Federal Census, the Commissioners Court of any such county is hereby authorized to increase the compensation of any such Justice of the Peace in an additional amount not to exceed fifty per cent (50%) of the sum allowed under the law for the fiscal year of 1950; and in any such county in which there may be a city of sixteen thousand (16,000) or more inhabitants according to the last preceding Federal Census, and where there is only one Justice of the Peace acting in such county, the Commissioners Court is hereby au-

thorized to increase the compensation of such Justice of the Peace in an amount not to exceed sixty per cent (60%) of said sum allowed under the law for the fiscal year of 1950, and is authorized to further increase the compensation of such Justice of the Peace an additional one per cent (1%) of said sum allowed under the law for the fiscal year of 1950 for each One Million Dollars (\$1,000,000) valuation, or fractional part thereof, in excess of the assessed valuation of said county for ad valorem tax purposes for the fiscal year of 1950.

Sec. 2. In addition to said increased salary which may be allowed as provided in the preceding section, such Justices of the Peace shall have and retain as unaccountable fees, all fees, commissions or payments for performing marriage ceremonies, and for acting as Registrar for the Bureau of Vital Statistics, and for acting as ex officio Notary Public.

[Acts 1951, 52nd Leg., p. 1487, ch. 503.]

**Art. 3936j. Justices of the Peace and Constables; Counties Over 350,000**

Sec. 1. In all counties in this State having a population in excess of three hundred fifty thousand (350,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the Justices of the Peace and Constables who are compensated on a salary basis at any reasonable sum provided such salaries shall not exceed Eight Thousand, Eight Hundred (\$8,800.00) Dollars per annum each. Said salaries shall be paid in twelve (12) monthly installments, provided that the salaries of the Justices of the Peace and Constables from the effective date of this Act for the remainder of the year 1953 shall be paid in monthly installments on the basis of the annual salaries fixed by the Commissioners Court pursuant to this Act. The Commissioners Court shall not be required to fix the salaries in all precincts at equal amounts, but the Commissioners Court shall have discretion to determine the amount of salaries to be paid each Justice of the Peace and each Constable in the several precincts.

Sec. 2. The Commissioners Courts of such counties shall determine the number and fix the salaries of all deputies, clerks and other employees of such Justices of the Peace and Constables.

Sec. 3. Said Commissioners Court is hereby authorized to allow such monthly car allowance to such Justices of the Peace and Constables and to their deputies, clerks and other employees in the performance of their official duties as the Commissioners Court may deem necessary.

Sec. 4. In the event that any section, subsection, paragraph, sentence, clause, phrase, or word of this Act shall be held invalid or inoperative, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it

would have enacted such remaining portions despite such invalidity.

[Acts 1953, 53rd Leg., p. 678, ch. 259.]

**Art. 3936k. Justices of the Peace; Increase of Compensation by Commissioners Court**

Sec. 1. The Commissioners Court in each county of this State having a population of one hundred fifty thousand (150,000) or under according to the last preceding Federal Census is hereby authorized, when in their judgment the financial condition of the county and the needs of the justices of the peace justify an increase, to enter an order increasing the compensation of such justices of peace to the amount which would comply with the above mentioned financial condition of the county and which order shall fall within the discretion of the Commissioners Court as the maximum sum to be allowed.

Sec. 2. The provisions of this Act shall be cumulative of all other laws pertaining to the compensation of justices of the peace.

Sec. 3. If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

[Acts 1953, 53rd Leg., p. 690, ch. 265.]

**Art. 3937. Tax Assessor**

Each Assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total value of the property assessed as follows: For assessing the state and county taxes on all sums for the first Five Million (\$5,000,000.00) Dollars, or less, five cents (5¢) for each One Hundred (\$100.00) Dollars of property assessed; and on all sums in excess of Five Million (\$5,000,000.00) Dollars three and one-half cents (3½¢) on each One Hundred (\$100.00) Dollars of property assessed; on all sums in excess of One Hundred Million (\$100,000,000.00) Dollars, two and one-quarter cents (2¼¢) on each One Hundred (\$100.00) Dollars. One-half of the above fee shall be paid by the state and one-half by the county. For assessing the taxes in all drainage districts, road districts, or other political subdivisions of the county, and water control and improvement districts, if assessed by the County Tax Assessor, the Assessor shall be paid three-fifths (¾) of one cent (1¢) for each One Hundred (\$100.00) Dollars of the assessed values of such districts or subdivisions; provided such compensation as is paid to the Assessor shall be pro-rated among the various drainage districts, road districts, or other political subdivisions of the county, and water control and improvement districts, according to the value of the property assessed in each district, or other political subdivision; and for assessing the poll tax, five cents (5¢) for each poll, and which shall be paid by the state. The

Commissioners Court shall allow the Assessor of Taxes such sums of money to be paid monthly from the county treasury as may be necessary to pay for clerical work, taking assessments, and making out the tax rolls of the county (such sums so allowed to be deducted from the amount allowed to the Assessor as compensation upon the completion of said tax rolls); provided the amount allowed the Assessor by the Commissioners Court shall not exceed the compensation that may be due by the county to him for assessing.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 138, ch. 94; Acts 1933, 43rd Leg., 1st C.S., p. 310, ch. 112; Acts 1949, 51st Leg., p. 829, ch. 448, § 1; Acts 1951, 52nd Leg., p. 332, ch. 204, § 1.]

#### Art. 3937a. Tax Assessor in Counties Having City Over 125,000

That hereafter there shall be paid to county tax assessors in counties containing a city with a population of over 125,000 according to the last United States census, where the county assessor of taxes compiles and makes a transfer book or card index compiled from the real estate transfers recorded in the county clerk's office showing the names transferred to, last owner assessed to, volume and page, description of property, assessed valuation and the consideration in the transfer; keeps a building permit record or card index of all building permits issued, showing name of owner, date of permit, description of property on which building is located, description of the improvement, the permit valuation and the final valuation of the building inspector; keeps a record of the builder's liens recorded in the county clerk's office; and also keeps a card index file of all automobiles, busses, and trucks, licensed and owned on January 1st of each year, showing owner of auto, owner's address, State Highway license number, make and year model of auto, all of said information for the facilitating of the work in said assessor's office and for the more correctly assessing such classes of property and for the purpose of keeping a close check on same, by the Commissioners' Court to said assessor who compiles and uses such records, extra compensation not to exceed Three Thousand Dollars annually beginning with the fiscal year 1927, to be paid in twelve monthly payments, same to be retained by said assessor as ex-officio salary exclusive of the maximum salary allowed by law.

[Acts 1927, 40th Leg., 1st C.S., p. 100, ch. 33, § 1.]

#### Art. 3938. Payment of Assessor

The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes, to be paid out of the first money collected for that year. The commissioners court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out

of the first money received from the collector on the rolls of that year.

[Acts 1925, S.B. 84.]

#### Art. 3939. Tax Collector

There shall be paid for the collection of taxes as compensation for the services of the Collector, beginning with the first day of September of each year, five (5%) per cent of the first Twenty Thousand (\$20,000.00) Dollars collected for the state, and two (2%) per cent on all taxes collected for the state over said sum; for collecting the county taxes, five (5%) per cent on the first Ten Thousand (\$10,000.00) Dollars collected, and two (2%) per cent on all such county taxes collected over said sum. For collecting the taxes in all drainage districts, road districts, or other political subdivisions of the county, and water control and improvement districts, if collected by the County Tax Collector, the Tax Collector shall be paid one-half of one ( $\frac{1}{2}$  of 1%) per cent on all such taxes collected; provided that the amount to be paid the Tax Collector shall be paid by the various drainage districts, road districts, or other political subdivisions of the county, and water control and improvement districts on a pro-rata basis in accordance with the amount collected for such districts; and in counties owing subsidies to railroads the Collector shall receive only one (1%) per cent for collecting such railroad taxes; and in cases where property is levied upon and sold for taxes he shall receive the same compensation as allowed by law to sheriffs or constables on making the levy and sale in similar cases, but in no case to include commission on such sales; and on all occupation and license taxes collected, five (5%) per cent; for issuing statement of ad valorem taxes due, the Collector shall not be entitled to charge any fee; and for each ad valorem tax certificate issued, to bear his seal of office, the Collector shall charge fifty cents (50¢) to be paid by the applicant therefor.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 829, ch. 448, § 2; Acts 1951, 52nd Leg., p. 332, ch. 204, § 2.]

#### Art. 3940. Charge for One Levy Only

In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more.

[Acts 1925, S.B. 84.]

#### Art. 3941. County Treasurer

The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half



per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [Acts 1925, S.B. 84.]

#### Art. 3942. Treasurer: Other Commissions

The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred. [Acts 1925, S.B. 84.]

#### Art. 3943. Treasurer: Commissions Limited; Increase in Compensation

(a) The commissions allowed to any county treasurer shall not exceed Two Thousand Dollars (\$2,000) annually; provided, that in all counties in which the assessed value of the property of such counties shall be One Hundred Million Dollars (\$100,000,000) or more as shown by the preceding assessment roll, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually; provided, that in all counties having a population of not less than seventy-five thousand (75,000) inhabitants, and not more than eighty thousand (80,000) inhabitants, according to the last preceding Federal Census, in which counties, road or road and bridge bonds in the amount of Six Million Dollars (\$6,000,000) or more and flood protection bonds in the amount of One Million Dollars (\$1,000,000) or more have been voted by the people, the treasurers thereof shall receive as their commissions a sum not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) annually; and, shall be allowed an assistant at a salary not to exceed One Thousand, Two Hundred Dollars (\$1,200) annually; provided, that in all counties having a population of one hundred and fifty thousand (150,000) inhabitants or more, and less than two hundred and ten thousand (210,000) inhabitants, according to the last preceding Federal Census, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually, and shall be allowed an assistant at a salary not to exceed One Thousand Dollars (\$1,000) per annum; provided, that in all counties containing a population of not less than forty-two thousand, one hundred (42,100) inhabitants nor more than forty-two thousand, two hundred and fifty (42,250) inhabitants, according to the last preceding Federal Census, and that in all counties containing a popula-

tion of not less than forty-five thousand (45,000) inhabitants nor more than forty-seven thousand (47,000) inhabitants, according to the last preceding Federal Census, the commissions and compensation to be paid to the county treasurers in said Counties shall be Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) equal monthly installments, and such compensation shall be fixed by the Commissioners Courts of said Counties.

(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the county treasurer justify the increase, to enter an order increasing the compensation of the county treasurer in an additional amount not to exceed twenty-five per cent (25%) of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year 1944 did not exceed the sum of Three Thousand, Six Hundred Dollars (\$3,600).

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 341, ch. 230; Acts 1931, 42nd Leg., p. 833, ch. 346, § 1; Acts 1937, 45th Leg., p. 501, ch. 252, § 1; Acts 1941, 47th Leg., p. 527, ch. 323, § 1; Acts 1947, 50th Leg., p. 53, ch. 40, § 1.]

#### Art. 3943a. Additional Compensation of Treasurer in Certain Counties

Sec. 1. That in counties having a population of not less than two hundred fifty thousand (250,000), and where in such counties the County Treasurer prepares the payrolls and makes payment thereunder in cash, and acts as paymaster for the county, in addition to the duties of a custodian of a county fund, there shall be paid to such County Treasurer out of the General Funds of the county an added compensation now allowed to him by the law the sum of Twenty-five Dollars (\$25.00) per month, and be paid to him on the first day of each calendar month, provided said compensation from all sources shall not exceed the sum of Three Thousand Two Hundred Dollars (\$3,200.00) per year.

Sec. 2. The County Treasurer of such counties shall be authorized to employ an assistant at a salary not to exceed the sum of One Hundred Fifty (\$150.00) Dollars per month, to be paid out of the General Funds of the county. [Acts 1931, 42nd Leg., p. 770, ch. 308; Acts 1933, 43rd Leg., p. 47, ch. 21.]

#### Art. 3943b. Compensation of Treasurer as Custodian of Road District Funds

In all counties in the State of Texas having a population of not less than one hundred and twenty-five thousand (125,000) nor more than one hundred and seventy-five thousand (175,000) inhabitants, according to the last Federal Census, and containing two (2) cities of more than forty thousand (40,000) inhabitants, according to the last Federal Census, and in which said counties there exists or is created any Road District or Road Districts under authority, Article 3, Section 52 of the

Constitution of the State of Texas and/or Acts of the Thirty-ninth Legislature, First Called Session, Chapter 16, Page 23,<sup>1</sup> the County Treasurer in such counties shall receive as salary for acting as custodian of the funds of such Road District or Road Districts a sum not to exceed Six Hundred Dollars (\$600) per annum to be fixed and determined by the Commissioners Court of such county; such salary shall be in addition to all other salary and compensation received and allowed to the County Treasurer by law, and shall be paid out of any available fund of said Road District or Road Districts in equal monthly installments.

[Acts 1937, 45th Leg., p. 208, ch. 110, § 1.]

<sup>1</sup> Article 752a et seq.

**Art. 3943c. Counties of 145,000 to 300,000; County Treasurer's Compensation; Assistant**

The Commissioners Court in each county in the State of Texas, having a population of not less than one hundred forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last preceding Federal Census, shall determine annually the salary to be paid to the County Treasurer at a reasonable sum not to exceed Three Thousand Nine Hundred (\$3,900.00) Dollars per annum. Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he is to receive and be entitled to retain such compensation from such Districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925. Said Treasurer shall be allowed to appoint one assistant at a reasonable salary not to exceed Two Thousand One Hundred (\$2,100.00) Dollars per annum. Said assistant shall have the authority to do and perform in the name of such County Treasurer such acts either clerical or ministerial in character as may be required of him by said County Treasurer. The maximum salary and compensation of said Treasurer shall not exceed Six Thousand (\$6,000.00) Dollars in the aggregate for any one calendar year.

[Acts 1947, 50th Leg., p. 438, ch. 244, § 1.]

**Art. 3943d. Counties of 600,000 or More; County Treasurer's Compensation**

That the commissioners court in each county in the State of Texas having a population of six hundred thousand (600,000) inhabitants or more according to the last preceding Federal Census, or any future Federal Census, shall determine annually the salary to be paid to the county treasurer at a reasonable sum of not less than Five Thousand Dollars (\$5,000) nor more than Eight Thousand Dollars (\$8,000) per annum, and the maximum salary and compensation of said treasurer shall not exceed Eight Thousand Dollars (\$8,000) in the aggregate for any one calendar year. Said treasurer shall be allowed to appoint such assistants as said commissioners court may deem necessary at reasonable salaries, to be determined by said com-

missioners court. Said assistants shall have the authority to do and perform in the name of such county such acts, either clerical or ministerial in character, as may be required of him by said county treasurer.

[Acts 1951, 52nd Leg., p. 207, ch. 122, § 1.]

**Art. 3943e. Salary of County Treasurer**

Sec. 1. In each county in the State of Texas having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, where all the county officers are compensated on a salary basis, the Commissioners Court shall determine annually the salary to be paid the county treasurer, provided that the annual salary to be paid to the county treasurer shall not be set at any sum less than One Thousand, Eight Hundred Dollars (\$1,800) per annum.

Sec. 2. In each county in the State of Texas having a population of at least twenty thousand (20,000) and not more than fifty thousand (50,000) inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salary of the county treasurer at any reasonable sum, providing such salary is not less than Two Thousand, Four Hundred Dollars (\$2,400) per annum.

Sec. 3. In each county in the State of Texas having a population of at least fifty thousand and one (50,001) and not more than one hundred thousand (100,000) inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salary of the county treasurer at any reasonable sum, providing such salary is not less than Thirty-six Hundred Dollars (\$3600).

Sec. 4. In each county in the State of Texas having a population of at least one hundred thousand and one (100,001) and not more than three hundred thousand (300,000) inhabitants according to the last preceding Federal Census, the Commissioners Court shall fix the salary of the county treasurer at any reasonable sum, providing such salary is not less than Forty-two Hundred Dollars (\$4200).

Sec. 5. In each county in the State of Texas having a population of at least three hundred thousand and one (300,001) inhabitants, or more, according to the last preceding Federal Census, the Commissioners Court shall fix the salary of the county treasurer at any reasonable sum, providing such salary is not less than Forty-eight Hundred Dollars (\$4800).

[Acts 1951, 52nd Leg., p. 675, ch. 391.]

**Art. 3944. County Surveyor**

County surveyors shall receive the following fees:

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league .....	\$ 3.00
One-third of a league .....	2.00
Less than one-third of a league ----	1.00

For recording surveys and plats required by law to be placed upon the map of a new county, for each 100 words .....	\$ .20
Examination of papers and records in his office at the request of any person .....	.25
Copies of all field-notes and plats, or any other papers or records in his office, for each 100 words, including certificate .....	.20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey, for each English lineal mile actually run .....	3.00
Surveying any tract of land, including all expenses of making the survey, and returning the plat and field notes, when the distance actually run is less than one English lineal mile .....	2.50
For services in designating a homestead, to include pay for chain carriers, for each day's service --	5.00

[Acts 1925, S.B. 84.]

**Art. 3945. Notary Public**

Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal .....	\$ 3.00
Each notice of protest .....	.50
Protesting in all other cases, for each 100 words .....	.50
Certificate and seal to such protest .....	.50
Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal .....	.50
Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal .....	.50
Administering an oath or affirmation with certificate and seal .....	.50
All certificates under seal not otherwise provided for .....	.50
Copies of all records and papers in their office, including certificate and seal, if less than 200 words --	.50
If more than 200 words, for each 100 words in excess of 200 words,	

in addition to the fee of fifty cents .....	\$ .25
All notarial acts not provided for --	.50
Taking the depositions of witnesses, for each 100 words .....	.15
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition .....	.50

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 986, ch. 461, § 1.]

**Art. 3946. Public Weighers**

Public weighers shall receive the following fees:

For each bale of cotton weighed, not exceeding .....	\$ .10
When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale .....	.15
Thereafter per bale per month, not exceeding .....	.10
For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain .....	.10
For each part of a wagon load of hay, grain or pecans, not exceeding .....	.05
For each barrel weighed .....	.10
For each bale of hides weighed ----	.10
For each loose hide weighed .....	.02

And he shall not be obligated to deliver any such articles so weighed until his fee therefor shall have been paid.

[Acts 1925, S.B. 84.]

**Art. 3946a. River Authority Directors**

Each Director of Boards of Directors of river authorities of the state created by the Legislature by special law pursuant to the provisions of Section 59 of Article 16 or Section 52 of Article 3 of the Texas Constitution shall receive as fees of office the sum of not more than Twenty-five Dollars (\$25) for each day of service necessary to discharge his duties, plus actual expenses, provided that such compensation and expenses are approved by vote of the Board of Directors. Each Director shall file with the Secretary or Treasurer a statement showing the amount due him each month or as soon thereafter as practicable before check shall be issued therefor.

[Acts 1963, 58th Leg., p. 497, ch. 182, § 1.]

## TITLE 62

### FENCES

#### Article

- 3947. "Sufficient Fence."
- 3948. Complaint of Trespass.
- 3949. Stock Impounded.
- 3950. Owner Not Liable.
- 3951. Persons Injuring Stock.
- 3952. Removing Adjoining Fence.
- 3953. How to Separate Fence.
- 3954. Adjacent Owner to Remove Fence.
- 3954-1. Turning Loose Too Many Stock.
- 3954-2. Fences Without Gates.
- 3954-3. Procedure.
- 3954-4. Illegal Fencing or Use of Public Lands.

#### Art. 3947. "Sufficient Fence"

Every gardener or farmer, except as otherwise provided by law, shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs passing through the same; but it shall be unlawful for any person whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least ten feet wide, and shall not be locked.

[Acts 1925, S.B. 84.]

#### Art. 3948. Complaint of Trespass

When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, such person may complain thereof to any justice of the peace of the county where such trespass shall have been done, and such justice upon such complaint being filed shall cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he has sustained by such trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock shall make full satisfaction for the trespass to the party injured to be recovered by suit therefor.

[Acts 1925, S.B. 84.]

#### Art. 3949. Stock Impounded

In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible

to the person damaged for all damages caused by said stock and all costs thereon.

[Acts 1925, S.B. 84.]

#### Art. 3950. Owner Not Liable

If it appears that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages.

[Acts 1925, S.B. 84.]

#### Art. 3951. Persons Injuring Stock

If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall be liable to the person injured for all damages by such person sustained.

[Acts 1925, S.B. 84.]

#### Art. 3952. Removing Adjoining Fence

It shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with any fence owned or controlled by any other person to remove the same, except by mutual consent or as hereinafter provided.

[Acts 1925, S.B. 84.]

#### Art. 3953. How to Separate Fence

Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person, upon giving notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation.

[Acts 1925, S.B. 84.]

#### Art. 3954. Adjacent Owner to Remove Fence

Whoever is the owner of any fence wholly upon his land to which the fence of another is adjoined or connected in any manner, may require the owner of such fence to disconnect and withdraw the same back on his own land by giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land.

[Acts 1925, S.B. 84.]

**Art. 3954-1. Turning Loose Too Many Stock**

No purchaser or other person than the lessee of public school, asylum and public lands shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof four head of sheep or goats for every ten acres so purchased, owned or controlled by him and uninclosed, and whoever violates this article shall be fined one dollar for each head of stock he may turn loose and each thirty days violation hereof shall be a separate offense.

[1925 P.C.]

**Art. 3954-2. Fences Without Gates**

Any person who has used any of the pasture lands by joining fences or otherwise, who shall build or maintain more than three miles lineal measure of fences running in the same general direction without a gate way in same, which must be at least ten feet wide and shall not be locked or kept closed so as to obstruct free ingress and egress, shall be fined not less than two hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 3954-3. Procedure**

In all prosecutions under the preceding article, the provisions of article 1380<sup>1</sup> shall apply. The preceding article shall not apply to persons who have heretofore settled upon lands not their own, where the inclosure is two hundred acres or less and where the principal pursuit of such person upon the land is that of agriculture.

[1925 P.C.]

<sup>1</sup> Repealed by § 3(a) of Acts 1973, 63rd Leg., p. 991, ch. 399, enacting the new Texas Penal Code.

**Art. 3954-4. Illegal Fencing or Use of Public Lands**

No person shall fence, use, occupy or appropriate by herding or line-riding, any portion of the public lands of the State, or of the lands belonging to the public free schools or asylums, without having first obtained a lease of such lands from the proper authority. Any person, whether owner of stock, manager, agent, employé or servant who shall fence, use, occupy or appropriate by herding or line-riding any portion of such lands without a lease thereof, shall be fined not less than one hundred nor more than one thousand dollars, and imprisoned in jail for not less than three months nor more than two years. Each day of such fencing, occupying, using or appropriating shall be a separate offense, and any person so offending may be prosecuted in the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis. "Fencing" within the meaning of this article is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund or of any public land of this State without having first obtained a lease thereof, by fencing of any kind or by inclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock shall be deemed unlawful appropriation, punishable as provided in this article for appropriating such lands. Each day said land is appropriated shall be a separate offense.

[1925 P.C.]

# TITLE 63

## FIRE ESCAPES

### Article

- 3955. Owner to Provide.
- 3956. Hotels, Theaters, etc.
- 3957. Offices and Plants.
- 3958. Warehouses and Mills.
- 3959. State, County, City and School Buildings.
- 3959a. Enforcement of Article 3959.
- 3960. Officials to Provide.
- 3961. "Owner" Defined.
- 3962. "Story" Defined.
- 3963. "Adequate Fire Escape."
- 3964. Location.
- 3965. Guide Signs and Exit Lights.
- 3966. Minimum Specifications.
- 3967. Painting.
- 3968. Tests.
- 3969. Affidavit.
- 3970. Completion Before Occupancy.
- 3971. Inspection.
- 3972. Injunction.
- 3972.1 Violation of Fire Escape Law.
- 3972.2 Violation by Agent.

### Art. 3955. Owner to Provide

The owner of each building, which is or may be constructed within this State, three or more stories in height or in case of schoolhouses two or more stories in height, constructed, used, or intended to be used in whole or in part as any of the following buildings, shall provide and equip such building with at least one adequate fire escape, and such additional fire escapes, as provided in the three succeeding Articles.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 659, ch. 401, § 1.]

### Art. 3956. Hotels, Theaters, etc.

For each hospital, seminary, college, academy, schoolhouse, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, house for the accommodation of transient guests, lodge hall, theater, public place of amusement, or hall or place used for public gatherings, having a lot area in excess of five thousand square feet, there shall be provided one additional adequate fire escape for each five thousand square feet of such excess or fraction thereof if such fraction exceeds two thousand square feet.

[Acts 1925, S.B. 84.]

### Art. 3957. Offices and Plants

For each office building, wholesale or retail mercantile establishment or store, work shop, or manufacturing establishment or industrial plant, having a lot area in excess of six thousand square feet, there shall be provided one additional adequate fire escape for each six thousand square feet of such excess or fraction thereof if such fraction exceeds twenty-five hundred square feet.

[Acts 1925, S.B. 84.]

### Art. 3958. Warehouses and Mills

For each warehouse, storage house or mill building, having a lot area in excess of eight thousand square feet, there shall be provided one additional adequate fire escape for each eight thousand square feet of such excess, or fraction thereof if such fraction exceeds thirty-five hundred square feet. The provisions of this title requiring the construction of standard fire escapes, shall not apply to grain elevators of steel, or steel and concrete construction, nor to wooden elevators where less than five persons are employed.

[Acts 1925, S.B. 84.]

### Art. 3959. State, County, City and School Buildings

A. Each building which is or may be constructed within this State of three (3) or more stories in height, except a schoolhouse hereinafter provided for, which is owned by this State, or by any city or county, and in which building public assemblies are permitted or intended to be permitted, or in which sleeping apartments are permitted or intended to be permitted, on any floor above the first, shall be provided and equipped with at least one adequate fire escape if the lot area of such building shall not exceed five thousand (5000) square feet, and one additional adequate fire escape for each five thousand (5000) square feet, or fraction thereof if said fraction exceeds two thousand (2000) square feet in excess of the first five thousand (5000) square feet of lot area.

B. Each school building which is or may be constructed within this State of two (2) or more stories in height, which is owned by any school district, and in which schools of any kind are conducted, shall be provided and equipped with an adequate fire escape or fire escapes to the extent and in accordance with requirements as follows:

#### Definitions

The following terms, words, and phrases as used in subdivision B of this Article shall have the following meanings unless a different meaning is plainly required by the context:

a. "Story" means the space included between two (2) successive floor levels except that a basement shall be construed as a story only when the floor level immediately above the basement is ten (10) feet or more above grade line on one or more sides of the building.

b. Types of construction shall be, for purpose of application of this law, classified as follows: "Fireproof," "semi-fire-

proofed," and "ordinary" as defined in the latest edition of the Building Code Recommended By The National Board Of Fire Underwriters.

#### Number and Types of Fire Escapes Required

a. Any school building three (3) stories or more in height of "fireproof construction," "semi-fireproof construction," or "ordinary construction" shall have one fire escape for every two hundred and fifty (250) pupils or major fraction thereof housed in the building above the first floor.

b. Any school building two (2) stories in height of "ordinary" construction shall have one fire escape for every two hundred and fifty (250) pupils housed above the first floor, or major fraction thereof.

c. Fire escapes for school buildings heretofore constructed may be either of the interior type, specifications for which are now provided in Article 3966, Title 63, Revised Civil Statutes, 1925, or exterior type as in this amendment hereinafter described. Exterior type fire escapes shall be free from obstruction, shall be constructed so as to secure a safe exit for children, shall be conveniently accessible from each floor above first, and shall be of sufficient width and strength so that each step and landing may accommodate two (2) adult persons at the same time. The exits from each floor shall consist of doorways, the base of which shall be at the same level as the corresponding floor of such building and the landing of the fire escape to which it leads, provided the State Department of Education approves such to be a convenient and safe passage. Each such doorway shall be not less than three (3) feet wide nor less than six (6) feet six (6) inches high, and shall be fitted with panic hardware approved by the National Board of Fire Underwriters. If there shall be two (2) or more rooms or hallways, or room and hallway, adjoining and convenient to the landing of a fire escape, each such room or hallway shall have a doorway leading to such landing.

d. Fire escapes for new school building of three (3) stories or more in height, of "fireproof" construction, shall be interior, specifications for which are now provided in Article 3966, Title 63, Revised Civil Statutes, 1925.

New school buildings hereinafter constructed and existing school buildings heretofore constructed of two (2) stories and less in height, of "fireproof" or "semi-proof" construction, or having stairways and hallways of either of these types shall not be required to have fire escapes.

New school buildings hereinafter constructed of two (2) stories or more in height of "ordinary" construction shall have interior types of fire escapes, specifications for which are now provided in Article 3966, Title 63, Revised Civil Statutes, 1925.

#### Description of Fire Escapes

a. Exterior fire escapes for the purpose of subdivision B of this amended Article shall be of the following construction, or similar ones approved by the National Board of Fire Underwriters.

(1) They shall be of incombustible materials throughout.

(2) They shall be designed for a live load of one hundred (100) pounds per square foot. The calculated live load shall be clearly stated on the plans submitted for approval.

(3) As a rule, fire escapes shall be supported by vertical steel columns. Where such construction is not possible because of conditions the use of steel brackets with bolts extending through the entire thickness of the wall may be approved.

(4) Landings and treads shall be of solid hatched steel plate or of steel gratings with interstices not exceeding three-fourths ( $\frac{3}{4}$ ) inches and so designed that the accumulation of snow and ice will be reduced to a minimum.

(5) Guard rails shall be at least three (3) feet six (6) inches in height and shall be substantially constructed. They shall be faced with heavy wire mesh, or steel balusters or rails not more than nine and one-half ( $9\frac{1}{2}$ ) inches o. c. may be used.

(6) There shall be handrails on each side of the stairs, securely attached to the guard rails or to the building walls. Handrails shall be two (2) feet four (4) inches to two (2) feet six (6) inches above the nosings.

(7) On present existing structures exterior type fire escapes, for the purpose of subdivision B of this amended Article, shall be an iron, steel or concrete stairway type fire escape, or an iron or steel straight chute type fire escape, or an iron or steel spiral chute type fire escape, or a combination of said three (3) types of fire escapes.

(8) Exterior type fire escapes, for the purpose of subdivision B of this amended Article, may be an iron or steel straight chute type fire escape or an iron or steel spiral chute type fire escape.

b. Design of interior fire escapes in addition to the specifications set out in Article 3966, Title 63, Revised Civil Statutes, 1925, shall be as follows:

(1) Stairs and landings shall be not less than three (3) feet six (6) inches long and not less than three (3) feet wide.

(2) Treads shall be not less than nine (9) inches wide plus a nosing of one (1) inch. Risers shall be not more than seven and one-fourth ( $7\frac{1}{4}$ ) inches.

(3) There shall be not more than a nine (9) foot six (6) inch rise in a single run. Longer runs shall be interrupted by land-

ings at least as deep as the width of the stairs.

(4) Stairs shall extend continuously to the ground. Counter-balanced and swinging sections will not be approved.

c. Exits of exterior fire escapes shall be as follows:

(1) Doors leading to fire escapes shall open on landings at least the width of the doors.

(2) Exit doors shall swing outward, shall be at least three (3) feet no inches by six (6) feet six (6) inches, shall be glazed with wire glass, and shall have their bottoms level with the floors of the rooms or corridors and landings they serve. Windows are prohibited as means of access to fire escapes.

(3) Exit doors shall be secure only by panic hardware approved by the National Board of Fire Underwriters. Hooks, latches, bolts, locks, etc. are prohibited.

d. Windows located beneath or within ten (10) feet in any direction of fire escapes shall be glazed with wire glass.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 659, ch. 401, § 2; Acts 1950, 51st Leg., 1st C.S., p. 112, ch. 43, § 1.]

#### Art. 3959a. Enforcement of Article 3959

The State Fire Marshal shall have general charge and supervision of the enforcement of the provisions of this Act,<sup>1</sup> and it is hereby made his duty and the duty of any Inspector of the State Fire Insurance Commission, and of the Chief of any Fire Department, and of the Fire Marshal of any city or town within this State, to enforce the provisions of this Act by all lawful means.

[Acts 1950, 51st Leg., 1st C.S., p. 112, ch. 43, § 2.]

<sup>1</sup> This article and article 3959.

#### Art. 3960. Officials to Provide

Each board, commission, official or person having charge or supervision of any building included in the preceding article, or having charge or supervision of the letting of contracts for the construction of such buildings, shall fully comply with the provisions of this title relating to providing and equipping such buildings with adequate fire escapes.

[Acts 1925, S.B. 84.]

#### Art. 3961. "Owner" Defined

The term "owner" within the meaning of this title, shall include persons, firms, associations, and private corporations.

[Acts 1925, S.B. 84.]

#### Art. 3962. "Story" Defined

The word "story" as used in this title, shall be construed to have its usual and ordinary meaning as applied to architecture, and in addition thereto shall be construed to include a

basement of any building that extends five feet or more above grade line on one or more sides of such building, a balcony or mezzanine floor of any building, a roof of any building used as a roof garden, and an attic of any building used for any purpose.

[Acts 1925, S.B. 84.]

#### Art. 3963. "Adequate Fire Escape"

An "adequate fire escape" within the meaning of this title, is defined to be an exterior iron, steel or concrete stairway type fire escape, or an exterior iron or steel straight chute type fire escape, or an exterior iron or steel spiral chute type fire escape, or a combination of said three types, or an interior type fire escape enclosed with noncombustible material and having self-closing fireproof shutters on all door and window openings thereof. Each type of such fire escapes shall be so constructed and arranged as to permit exit upon such fire escape from each floor of the building above the first floor and shall provide a continual egress upon it from such building to grade, and the material, construction, erection and test of such fire escapes shall comply at least with the minimum specifications for each respective type thereof, as hereinafter set forth.

[Acts 1925, S.B. 84.]

#### Art. 3964. Location

All such fire escapes shall, consistent with accessibility, be located as far as possible from stairways, elevator hatchways and other openings in the floors, and where possible, they shall be located at the ends of hallways or corridors or unobstructed passageways, and as far as is consistent with the construction and location of the building.

[Acts 1925, S.B. 84.]

#### Art. 3965. Guide Signs and Exit Lights

In all such buildings there shall be installed and maintained therein in good condition at all times, at least one red light at each exit to each fire escape, and one guide sign at each hall or corridor intersection, and one additional guide sign for every twenty-five lineal feet of hallway or corridor leading to such fire escape. All exit lights shall have painted thereon the words "Fire Escape Exit," and all guide signs shall have painted thereon the words "Fire Escape," and an arrow or hand pointing to the nearest fire escape exit. It shall be unlawful for any person to obstruct any fire escape in any manner that would prevent free access thereto or free use thereof, or to obstruct any hallway, corridor or entrance leading to such fire escape by means of any door provided with locks requiring a key to operate, or by partitions or by any objects of any kind whatsoever.

[Acts 1925, S.B. 84.]



**Art. 3966. Minimum Specifications**

The minimum specifications for the several types of adequate fire escapes required by this law are as follows:

**Exterior Stairway Type:**

(1) Shall consist of balconies and stairways on the exterior of the building and be constructed of iron, steel or reinforced concrete, and shall be in superimposed form, or straight run form, or superimposed form with intermediate balconies, or a combination of any such form and type.

(2) Balconies: Balconies for stairs in superimposed form attached to the building at two or more floors, shall equal in length the horizontal length of the stair runs, plus an amount at each end equal to the width of the stairs, and shall be as long as the width of the opening for exit in the building wall and shall be at least fifty inches wide inside of railings. Balconies for stairs in superimposed form with intermediate balconies attached to the building at two or more floors shall be not less in width than the combined width of the stairways connected therewith leading both up and down, and the landings at the head and the foot of the stairs shall be as deep as the width of the stairs, and shall be as long as the width of the opening for exit in the building wall. Balconies for stairs in straight run form shall be not less in width than the width of the stairs and as long as the width of the opening for exit in the building wall. The minimum unobstructed width of any exterior passageway in the entire fire escape, whether parallel to the building or at right angles to it, shall be twenty-four inches. The floors of iron or steel balconies shall be solid or of slats and if solid, shall have scoriated surface to prevent slipping and pitched not less than one-half inch in ten feet to secure drainage, or if of slats, shall be placed not more than three-quarters of an inch apart and secured in place with rivets or bolts. Material in floors shall be not less than three-sixteenths of an inch thick. Railing enclosures of all balconies shall be not less than two feet nine inches high, and if of vertical and horizontal slat or grill construction, no space shall have the horizontal width of more than eight inches, and if of truss construction the span of each panel shall not exceed three feet. No opening in railing enclosures on any construction shall exceed two square feet in area. All railing enclosures throughout their lengths shall be free from obstructions tending to break handholds and the passage space shall be smooth and free from obstructions or projections. All railing enclosures shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Balconies shall be anchored to building

with bolts not less than one inch in diameter, extending through the wall and provided with wall bearing plate on the inside not less than five inches square and three-eighths inch thick or anchored by such bolts set in concrete or masonry or made integral in new buildings. Balconies shall never be placed above and not more than one foot below the top of the sill of the opening for exit in building wall, preferably level with sill. Concrete balconies shall comply with all requirements herein set forth and be made of reinforced concrete, the concrete to be one part cement, two parts sand and four parts stone or gravel. Railing enclosures of concrete balconies shall be as herein specified, or of reinforced concrete, with balusters spaced not over one foot apart.

(3) Stairs: The pitch of stairways shall not exceed forty-five degrees. Treads shall be not less than eight inches wide, exclusive of nosings, and not less than twenty-four inches long and placed so that the rise, either open or closed, shall not exceed eight inches and if solid shall have scoriated surface, and if made of slats they shall be placed not more than three-quarters of an inch apart and be well secured in place by bolts or rivets. Material in treads shall be not less than three-sixteenths of an inch thick. Railings shall be provided on both sides of stair, not less than two feet nine inches high as measured vertically from the center of the stair treads, and supported by balusters spaced not exceeding five feet apart. Intermediate rail shall be provided midway between top rail and stair stringers, or if intermediate rail is omitted, balusters shall be placed not over one foot apart. Railings on stairs shall permit not less than twenty-four inches unobstructed passageway, and shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Concrete stairs shall comply with all requirements herein set forth and be made of reinforced concrete, concrete mixture to be as herein specified for concrete balconies. Railing enclosures of concrete stairs shall be as herein specified, or of reinforced concrete balustrade with balusters spaced not over one foot apart. Stairways shall be built stationary to grade where possible, and this shall be required in such buildings as schools and hospitals. Where fire escapes terminate over streets, alleys or private driveways, or like condition, and shall terminate in a hinged and counter-balanced section of stairway, the construction of such section of stair shall conform with the stationary parts of stairways and shall be so balanced that the weight of one person on third or fourth tread will lower same to landing. Bearings for such counter-balanced stairs shall be either bronze bush-

ings or have sufficient clearance provided to prevent sticking on account of corrosion. No latch or lock shall be attached to the counter-balanced stair in up position but latch shall be provided to hold stair in down position when same has once been swung to ground. The connection between stair railings on the stationary part and the counter-balanced part of stairways shall be designed to prevent probability of injury to persons using said fire escape. Where necessary a suitable opening shall be provided in any awning, roof or other intervening obstruction, to admit counter-balanced stair and permit passage of persons thereon.

(4) **Roof Connection:** Exterior stairway type fire escapes shall be connected with the roof of building to which attached. If the roof of the building is such that escape by way of the roof might be necessary the fire escape shall extend to the roof. If the connection is only for fire department use, it shall be made with a ladder of the goose neck type, the stringers of which shall be of material at least three-eighths of an inch thick and the rungs shall be at least three quarters of an inch in diameter, sixteen inches long and not exceeding fourteen inches apart. Said ladder shall be anchored to the wall.

(5) **Clearance:** The minimum clearance at all points on balconies and stairs as measured vertically shall be six feet six inches.

#### Exterior Chute Type:

(1) Shall consist of balconies and straight gravity chutes on the exterior of the building and constructed of iron or steel and placed at an angle not to exceed forty-five degrees and shall be in superimposed form, parallel to or at right angles to the building, or straight run form, parallel to or at right angles to the building, or a combination of these two forms.

(2) **Balconies:** Shall be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) **Chute:** Shall be made of material of not less than number fourteen gauge iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be twenty inches wide and eighteen inches deep, inside dimensions, and free of obstructions or sharp edges throughout its length, and in cross section shall have concave bottom and straight sides. The top edges of the chute shall be stiffened and protected throughout its length with iron or steel angles, free from any sharp edges, and the angles of size necessary to carry the maximum loading possible and the chute shall be reinforced crosswise underneath with iron or steel angles. A landing of same

material as the chute shall be provided at the lower end of the chute, and shall be of sufficient length, in proportion to the length of the chute and the concavity of its surface, to check the momentum attained through gravity and afford a safe stop. Such landing shall be six inches wider on each side than the chute, where wall construction will not interfere, and there shall be no sharp edges or ragged projections exposed, and said landing shall rest upon and be anchored to concrete base not less than six inches thick. All rivets exposed inside of chute and on top side of landing to be countersunk and ground down smooth. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

#### Exterior Spiral Chute Type:

(1) Shall consist of balconies in superimposed form and spiral gravity chute on the exterior of the building and constructed of iron or steel.

(2) **Balconies:** To be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) **Chute:** Slideway shall be made of material of not less than number sixteen gauge iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be not less than thirty inches wide inside, with the slideway banked at the outer edge to prevent a passenger being thrown against guard rail or enclosure, and enclosed by either a continuous wall or a guard rail, the material of which shall not be less than number eighteen gauge iron or steel and said guard rail shall be not less than thirty inches high. The entire slideway shall be free from obstructions or sharp edges and all rivets exposed inside to be countersunk and ground down smooth. The chute shall be constructed in helical or spiral form around a central column, resting on and anchored to concrete base not less than eighteen inches thick. The chute shall terminate not more than two feet above the grade and be so constructed and arranged that normal landing will be in a standing position. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

#### Interior Type:

(1) Shall be a stairway type constructed of iron, steel or concrete or straight chute type constructed of iron or steel or spiral chute type constructed of iron or steel, either of which types erected on the interior

of the building to be enclosed with non-combustible material and all door and window openings in such enclosure protected with self-closing fireproof shutters.

(2) Balconies or Landings: Balconies or landings to be the same construction as specified for balconies in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such balconies shall permit not less than forty inches unobstructed passageway, and such balconies or landings shall be provided and erected on the interior of the enclosing walls on a level with the floors of the building to be served.

(3) Stairway Type: Stairs to be same construction as specified for stairs in subdivision three of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such stairs shall permit not less than forty inches unobstructed passageway in all its parts. Stairs known as "spirals" or "winders" shall not be permitted.

(4) Straight chute type: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel straight chute type fire escape.

(5) Spiral chutes: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel spiral chute type fire escape.

(6) Access: They shall be accessible from all parts of the building which they are designed to serve, and all lobbies, halls and passageways on each floor leading to fire escapes and in connection therewith, shall be not less than thirty-six inches wide, and not less than six feet six inches high, and shall be level with the floor upon which it opens and serves. They shall be so constructed at lower end as to permit direct egress to the outside of the building at grade. All interior stairway type fire escapes shall be continuous starting at ground floor and shall never descend to any basement, and shall extend through roof of the building and terminate in a pent house constructed of non-combustible material with self-closing fire door as herein specified.

(7) Enclosing walls: The following materials may be used for enclosing walls of interior escapes:

(a) Brick or plain solid concrete not less than eight inches in thickness for the uppermost thirty feet, increasing four inches in thickness for each lower section of thirty feet or part thereof, or eight inches in thickness for the entire height when wholly supported at intervals not exceeding thirty feet.

(b) Reinforced stone or gravel concrete not less than five inches in thickness for the uppermost thirty

feet, increasing two inches in thickness for each lower section of thirty feet or part thereof, or three inches in thickness for entire height when supported at vertical intervals not exceeding twenty feet, and braced where necessary with lateral supports or suitable steel uprights.

(c) Reinforced cinder concrete not less than five inches in thickness for the entire height when supported at vertical intervals not exceeding fifteen feet, and braced where necessary with lateral supports or suitable steel uprights.

(d) Hollow terra cotta blocks laid in cement mortar not less than five inches thick over all, or hollow concrete blocks of either stone or cinder concrete mortar, not less than five inches thick over all, or solid or hollow blocks consisting of gypsum containing not more than twenty-five per cent by weight of cinders, asbestos fibre, wood chips or vegetable fibre, laid in gypsum plaster or cement mortar tempered with lime, not less than five inches thick over all, or metal lath on steel studding covered with Portland cement mortar or gypsum plaster of a finished thickness of not less than two inches in the case of solid partitions, nor less than three inches in the case of hollow partitions. All openings in such walls or partitions shall have substantial steel framing, the vertical members of which shall be securely attached to the floor construction above and below.

(8) Door and window openings: All door openings shall be protected by the use of automatic or self-closing fire doors of standard manufacture, bearing Underwriters label, and where automatic fire doors are used the same shall be enclosed in recess partitions. All doors shall be so arranged and equipped to remain in closed positions at all times and under all conditions except during actual use. All window openings shall have metal sash, bearing Underwriters label, and wire glass.

(9) Lighting: All interior fire escapes shall be provided with not less than one light at each landing equal to a ten watt electric globe, in a separate circuit from that of the building, arranged to operate should the regular lighting system of the building be disabled.

[Acts 1925, S.B. 84.]

#### Art. 3967. Painting

All fire escapes of any type constructed of iron or steel shall have at least two coats of good metallic paint when erected and shall be painted as frequently thereafter as may be necessary to preserve from rust or climatic influ-

ences and at least once every two years. The sliding surface of either the straight chute or spiral chute type fire escape shall be thoroughly cleaned and painted at least once each year.  
[Acts 1925, S.B. 84.]

#### Art. 3968. Tests

Upon completion and before final approval of any fire escape of any of the types specified herein, both exterior and interior, such fire escape shall be tested by the erector by the application of a live load of one hundred and sixty pounds per square foot of area of balcony floor and stair treads, or a dead load of two hundred and forty pounds per square foot of area of balcony floor and stair treads, in either case simultaneously imposed upon each balcony and the stairways connected therewith leading both up and down. Sand, gravel, concrete blocks or any other suitable commodity may be used in applying these tests, but the load must be accurately weighed and applied as specified herein. By the dead load is meant a load placed in position in whole or in part by any mechanical means and without any person being on the fire escape at the time the test is made, and by live load is meant a load placed in position by mechanical means or by persons and with persons on the fire escape as part of the load at the time the test is made.

[Acts 1925, S.B. 84.]

#### Art. 3969. Affidavit

Such tests shall be conducted in the presence of the State Fire Marshal or a representative duly appointed by him, or the chief of any fire department, or the city fire marshal of an [any] city or town. If the State Fire Marshal or his representative or a chief of a fire department, or a city fire marshal cannot be present to witness such test, such officials may permit the erector to furnish an affidavit setting forth that the minimum test herein specified has been made and that the fire escape has fully withstood said test and may accept such affidavit in lieu of the personal presence of such officials.

[Acts 1925, S.B. 84.]

#### Art. 3970. Completion Before Occupancy

All buildings constructed hereafter and within the provisions of this title providing for the equipment of buildings with fire escapes, shall be so provided and equipped, and otherwise meet all requirements of this law, before such buildings are occupied or used in whole or in part.

[Acts 1925, S.B. 84.]

#### Art. 3971. Inspection

All fire escapes, extensions and additions to fire escapes constructed and erected under the provisions of this law, shall be inspected by the State Fire Marshal, or any inspector of the

State Insurance Commission, or the chief of the fire department of any city or town, or any city fire marshal, before being approved, and no fire escape, extension or addition shall be approved, unless the same conforms to and meets all the provisions of this law.

[Acts 1925, S.B. 84.]

#### Art. 3972. Injunction

The Attorney General, or the county attorney of any county in which any building is maintained in violation of any provision of this title, or the district attorney of any district in which such building is located, may proceed by suit or injunction against the owner, or person, board, commission or official having charge of such buildings, to enforce the provisions of this title. Such suit or injunction shall be brought in the name of this State in the district court of the county in which such building is located. Such suit or injunction may be prosecuted by the Attorney General, county or district attorney upon their own motion or upon the relation of any individual, or of any person mentioned in the preceding article. District courts and the judges thereof may issue mandatory injunctions and other writs against any such owner, person, board, commission or official, to enforce the provisions of this title. A disobedience of such injunction shall constitute a contempt of court and be punishable as now provided by law for contempts. Injunctions in such cases may be heard and granted either in term time or vacation, after the defendant has been given ten days notice of the time and place set for the hearing of same.

[Acts 1925, S.B. 84.]

#### Art. 3972.1 Violation of Fire Escape Law

Any owner of any building required by law to be equipped with adequate fire escapes, who shall fail or refuse to comply with any provision of the statutes regulating fire escapes, or any person who shall obstruct any fire escape or hallway or entrance leading thereto, so as to prevent free access to or use of either, shall be fined not less than twenty nor more than fifty dollars. If such owner be a corporation, each officer or member of the board of directors, thereof, shall be subject to such fine. Each day's failure or refusal to comply with any provision of said law is a separate offense.

[1925 P.C.]

Acts 1923, 38th Leg., ch. 170, p. 361, §§ 6, 14 read as follows:

"Sec. 6. The term 'owner' within the meaning of this Act, shall include individual persons, firms, associations and private corporations.

"Sec. 14. The owner of any building within the provisions of this Act, who shall fail, neglect or refuse to comply with any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty dollars (\$20.00), nor more than fifty dollars (\$50.00), and each day's failure, neglect or refusal to comply with any of the provisions of this Act shall constitute a separate offense."

**Art. 3972.2 Violation by Agent**

If the owner of any building within the provisions of said law be a non-resident of this State, and such owner fails, neglects or refuses to comply with any provision of said law, it shall be unlawful for any person within this State to represent such non-resident owner as

an agent in the care, management, supervision, control, or renting of such building, and whoever violates this article shall be punished as provided in the preceding article. Each day that such agent so represents such non-resident owner is a separate offense.

[1925 P.C.]

**TITLE 63A**

**FIRE PROTECTION DISTRICTS**

**Art. 3972a. Inoperative**

This article, Acts 1951, 52nd Leg., p. 1197, ch. 495, providing for the creation, government, operation and maintenance of fire protection districts for the conservation of natural resources and properties within the state, outside of incorporated cities, towns and villages, is inoperative.

Section 21a provided that the Act "shall become operative when the Constitutional Amendment provided

for in Senate Joint Resolution No. 8 is adopted by a vote of the qualified electors of this State and becomes effective."

S.J.R. No. 8, 52nd Leg., 1951, proposing an amendment to section 48-d of Article III of the Constitution, authorizing the legislature to provide for the creation of rural fire prevention districts, was not adopted by the qualified electors at the election held on November 13, 1951.

## TITLE 64

### FORCIBLE ENTRY AND DETAINER

#### Article

- 3973. When Action Lies.
- 3974. "Forcible Entry."
- 3975. Other Cases.
- 3975a. Notice to Tenant to Vacate for Non-payment of Rent; Action to Enforce.
- 3975b. Judgment Against Tenant for Attorney's Fees and Costs of Suit.
- 3976 to 3991. Repealed.
- 3992. Judgment on Appeal.
- 3993. Repealed.
- 3994. No Bar.

#### Art. 3973. When Action Lies

If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force or (3) shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. Any justice of the peace of the precinct where the property is situated shall have jurisdiction of any case arising under this title.

[Acts 1925, S.B. 84.]

#### Art. 3974. "Forcible Entry"

A "forcible entry," or an entry where entry is not given by law, is:

1. An entry without the consent of the person having the actual possession.
2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

[Acts 1925, S.B. 84.]

#### Art. 3975. Other Cases

A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the termination of his will.
2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.
3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid,

to him upon whose possession the first entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession.

[Acts 1925, S.B. 84.]

#### Art. 3975a. Notice to Tenant to Vacate for Non-payment of Rent; Action to Enforce

That except where otherwise contracted orally or by written lease, upon default in payment of rent by a tenant, any landlord leasing to a tenant for a tenancy in excess of a period of week to week, upon default of payment of rent, shall give to such tenant a minimum of three (3) days written notice to vacate such premises delivered in person or by mail to the leased premises prior to filing an action for forcible entry or detainer. Upon the expiration of at least said three (3) days or stipulated length of notice, calculated from the date of delivery of the notice to the premises, if the tenant has not vacated said premises, action in forcible detainer or at common law may be commenced. Notice to vacate under the circumstances provided herein shall supplant existing periods of notice at common law.

[Acts 1957, 55th Leg., p. 354, ch. 163, § 1.]

#### Saved From Repeal

*This article was expressly saved from repeal and was in no way amended by Acts 1965, 59th Leg., p. 769, ch. 360. See article 3975b, § 3.*

#### Art. 3975b. Judgment Against Tenant for Attorney's Fees and Costs of Suit

Sec. 1. Whenever a forcible entry and detainer suit or a forcible detainer suit is brought by a landlord against a tenant unlawfully holding over the premises of the landlord and the landlord has given the tenant written notice and demand to vacate such premises, by registered or certified mail, at least ten (10) days prior to filing suit in accordance with Section 2 of this Act, and such tenant vacates the premises after suit is filed but before judgment is rendered therein, the justice of the peace may render judgment for the landlord and against the tenant for attorney's fees in an

amount determined by the court to be reasonable, plus costs of suit. If, under such circumstances, said tenant does not vacate the premises prior to rendition of judgment therein, and judgment in such suit is rendered in favor of the landlord, the landlord may recover reasonable attorney's fees in an amount determined by the court to be reasonable, at the discretion of the court.

Sec. 2. In the written notice and demand to vacate provided for in Section 1, the landlord shall give notice to the tenant that in the event he has not vacated the premises within ten (10) days and suit is brought by the landlord, judgment may be entered against the tenant for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

Sec. 3. The provisions of this Act shall be cumulative of all other remedies presently available to landlords as provided by law, and shall not be construed as repealing or in any way amending Chapter 163, Acts of the 55th Legislature, Regular Session, 1957 (compiled

as Article 3975a of Vernon's Annotated Civil Statutes).

[Acts 1965, 59th Leg., p. 769, ch. 360.]

**Art. 3976 to 3991. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3992. Judgment on Appeal**

The judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

[Acts 1925, S.B. 84.]

**Art. 3993. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 3994. No Bar**

The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

[Acts 1925, S.B. 84.]

## TITLE 65

### FRAUDS AND FRAUDULENT CONVEYANCES [Repealed]

**Arts. 3995 to 3999. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967**

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code, repealed articles 3995 to 3999 effective September 1, 1967.*

See, now, Business and Commerce Code, §§ 24.01-24.05, 26.01.

**Arts. 4000 to 4003. Repealed by Acts 1965, 59th Leg., p. 1, ch. 721, § 10-102, eff. June 30, 1965**

*Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, enacting the Uniform Commercial Code, repealed articles 4000 to 4003 effective June 30, 1966. Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721 was itself repealed by Acts 1967, 60th*

*Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code effective September 1, 1967. However, the latter Act specifically provided that the repeal did not affect the prior operation of the 1965 Act or any prior action taken under it.*

See, now, Business and Commerce Code, §§ 6.101 et seq., 9.201, 9.202.

**Art. 4004. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2619, ch. 785, § 4, eff. Sept. 1, 1967**

*Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code, repealed article 4004 effective September 1, 1967.*

See, now, Business and Commerce Code, § 27.01.

## TITLE 66

# FREE PASSES, FRANKS AND TRANSPORTATION

### Article

- 4005. Free Passes Prohibited.
- 4005a. Free Pass Law.
- 4006. Exceptions.
- 4006a. Exceptions.
- 4006b. Using Another's Pass.
- 4006-A. Free Transportation to Indian War Veterans.
- 4007. Definitions.
- 4008. Special Rates.
- 4008a. Aged, Blind or Disabled Persons; Special Rates.
- 4008b. Street Railways.
- 4009. Free Transportation.
- 4010. Advertising.
- 4011. Discrimination as to Persons.
- 4012. Evidence of Authority.
- 4013. Discrimination by Device.
- 4013a. Discrimination by Device.
- 4014. Reports, etc.
- 4015. Penalty.
- 4015a. Unlawfully Using Free Pass.
- 4015b. Evading Law.
- 4015c. May be Compelled to Testify.
- 4015d. Reduced Rate for Officers.
- 4015e. Collecting Fare from State or Political Subdivision by Officer or Employee Using Free Pass.
- 4015f. Preference in Transportation.

### Art. 4005. Free Passes Prohibited

No steam or electric railway company, street railway company, interurban railway company or other chartered transportation company, express company, sleeping car company, telegraph company, telephone company or person or association of persons operating the same, nor any receiver or lessee thereof, nor any officer, agent or employee or receiver of any such company in this State shall knowingly haul or carry any property free of charge, or give or grant to any person, firm or association of persons a free pass, frank, privilege or substitute for pay or a subterfuge which is used or which is given to be used instead of the regular fare or rate of transportation or any authority or permit whatsoever to travel or to pass or convey or transport any person or property free, nor sell any transportation for anything except money, or for any greater or less rate than is charged all persons under the same conditions, over any railway or transportation lines or part of line in this State; or shall knowingly permit any person to transmit any message free in this State; or shall give any frank or right or privilege to transmit any message free in this State or property free of charge or for greater or less fare or rate than is charged other persons in this State for similar service, except as hereinafter provided in this title.

[Acts 1925, S.B. 84.]

### 4005a. Free Pass Law

Any president, director, officer, employé or agent of any steam or electric railway compa-

ny, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, who shall sell any transportation for anything except money or knowingly give, grant, issue, or cause to be issued, a free pass, a frank, a privilege, or any substitute for, or in lieu thereof, for the transportation of any person, article or thing, or the sending or transmitting any messages over wire or other means of transmitting messages in this State, shall be fined not less than five hundred nor more than two thousand dollars, and may, in addition thereto, in the discretion of the jury, be confined in the penitentiary not less than six months nor more than two years.

[1925 P.C.]

### Art. 4006. Exceptions

The preceding Article shall not be held to prevent any steam or electric interurban railway, telegraph company, or chartered transportation company, or sleeping car company, or the receivers or lessees thereof, or persons operating same, or the officers, agents, or employees thereof, from granting or exchanging free passes or free transportation, franks, privileges, substitutes for pay, or other thing prohibited by the provisions of the preceding Article to any of the following named persons: The actual bona fide employees of any such person or corporation, company, association, or the members of their families; persons actually employed on sleeping cars and express cars; newsboys employed on trains; railway mail service employees, and their families; furloughed, pensioned, superannuated employees, and members of their families; the widows of deceased former superannuated and/or pensioned employees; persons who have been disabled or who have become infirm in the service of any such corporation, company, association, or person; the remains of any persons killed or who may have died in the employment of a common carrier; members of the family of persons killed while in the service of any such common carrier; the family or any person who was, for a period of ten (10) years or more, an employee of such common carrier and who died while in the service of the same; ex-employees traveling for the purpose of entering the service of any such common carrier; post office inspectors; the chairman of bona fide members of grievance committees of employees; bona fide custom and immigration inspectors employed by the government; State Health Officer and one assistant; Federal health officers; county health officers; members of the Industrial Accident Board or any employee



thereof; State Railroad Commissioners; Secretary of the Railroad Commission; Engineer of the Railroad Commission; Inspector of the Railroad Commission; Auditor of the Railroad Commission; State Game, Fish and Oyster Commissioners and the Executive Secretary and two (2) assistants; government representatives from the Texas fish hatcheries; shipments of fish for free distribution in the waters of this State; the necessary caretakers while en route and return of any shipments of live stock, poultry, fruit, melons, or other perishable produce; trip passes to indigent poor when application therefor is made by any religious or charitable organization; Sisters of Charity, or members of any religious society of like character; any Minister of religion on intrastate trips in this State; any citizen of the State who served in the War between the States of the Union, either on the Confederate side or on the Union side of said War; veterans of the Spanish-American War, and the wife or widow of any such citizen or veteran; veterans of the Texas Ranger force who served the State prior to the year 1900, and their wives or widows; delegates to different farmers' institutes, farmers' congresses, and farmers' union; delegates to State and district firemen's conventions from volunteer fire companies; managers of Young Men's Christian Associations, or other eleemosynary institutions while engaged in charitable work; the officers or employees of industrial fairs; provided that no more than four (4) officers or employees of any one fair or fair association shall receive free passage in any one year; persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; persons and property carried in cases of general epidemic, pestilence, or other calamitous visitation at the time thereof or immediately thereafter; United States Marshals and no more than two (2) of the deputies of each such Marshal; State Rangers; the Adjutant General and Assistant Adjutant General of this State; members of the State Militia in uniform and when called into the service of the State; Sheriffs and no more than two (2) of their deputies; Constables and no more than two (2) of their deputies; Chiefs of Police or city marshals, whether elected or appointed; members of the Livestock Sanitary Commission of Texas and their inspectors not to exceed twenty-five (25) in number for any one year; and any other bona fide peace officer when his duty is to execute criminal process; bona fide policemen or firemen in the service of any city or town in Texas when such policemen or firemen are in the discharge of their public duty; but this provision shall not be construed so as to apply to persons holding commissions as special policemen or firemen.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 334, § 1; Acts 1941, 47th Leg., p. 15, ch. 8, § 1.]

#### Art. 4006a. Exceptions

The preceding article shall not apply in cases where the laws of this State provide that such companies as are referred to in said article, or the receivers or lessees thereof, or persons operating the same, or the officers, agents or employes thereof, may grant free passes, franks, privileges, or substitutes for pay to or for the persons, articles or things referred to and mentioned in said laws and said article.

[1925 P.C.]

#### Art. 4006b. Using Another's Pass

If any person shall present, or offer to use, in his own behalf, any permit or frank whatever, to travel, pass or to convey any person or property or message which has been issued to any other person, or shall, knowing that he is not entitled under the law, apply to any railway, express, telegraph or telephone company, officer, agent, lessee or receiver thereof, for any free pass, frank, privilege or a substitute for pay given or to be used instead of the regular fare or rate for transportation, or for any other consideration, except money, he shall be confined in jail not less than thirty days and not more than twelve months, and be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

#### Art. 4006-A. Free Transportation to Indian War Veterans

Article 4005 shall not be held to prevent any railway company or other companies mentioned therein from granting free transportation, franks, privileges, or passes to Indian War Veterans, subject to the same limitations as apply to other Veterans provided in Article 4006.

[Acts 1931, 42nd Leg., p. 335, ch. 202, § 1.]

#### Art. 4007. Definitions

The word "employee" as used in this title shall be held to include all officers, agents or employees, actually employed and engaged in the service of such corporation, company, association of persons, including its officers, bona fide ticket and freight agents, physicians, surgeons and general attorneys, and attorneys who appear in court to try cases and receive a reasonable annual salary therefor. The word "family" as used in this title shall include the wife, minor children and dependents of any such employé or person. The words "minister of religion" shall be construed to mean only those whose principal occupation is that of a minister of religion, priest or rabbi.

[Acts 1925, S.B. 84.]

#### Art. 4008. Special Rates

Nothing in this title shall be held to prevent any corporation, association or person mentioned in the first article of this title from granting transportation at the rate of one cent per mile to veterans mentioned in the preceding article, or their wives or widows; honora-

bly discharged soldiers, sailors, marines and Red Cross nurses of the late world war to or from the annual convention, Department of Texas American Legion; any minister of religion for intrastate trips, or from granting to ministers of religion reduced rates of one-half the regular fare, or to prohibit the making of special rates for special occasions or under special conditions, provided authority therefor shall first be obtained from the Railroad Commission of Texas; or to prohibit transportation between points wholly within this State at the reduced rate of one cent per mile while traveling on official business connected with their respective offices, the following named peace officers, to wit: Adjutant General of this State; State rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives.

[Acts 1925, S.B. 84.]

#### Art. 4008a. Aged, Blind or Disabled Persons; Special Rates

Transportation companies which operate in the municipalities of this state may set special reduced rates or fares for persons who are 60 years of age or older or who are blind or disabled.

[Acts 1971, 62nd Leg., p. 88, ch. 50, § 1, eff. April 6, 1971; Acts 1973, 63rd Leg., p. 758, ch. 333, § 1, eff. June 12, 1973.]

Section 2 of the 1971 Act provided: "To the extent that the provisions of this Act conflict with any other law, the provisions of this Act prevail."

#### Art. 4008b. Street Railways

All persons or corporations owning or operating street railways or motor buses in or upon the public streets of any city of not less than twenty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half the regular fare collected for the transportation of adults, to students in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within, or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that such student is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such schools are

in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport, free of charge, children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this Article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare.

Any such person or any officer or employee of any such corporation or other person who knowingly violates any provision of this Article, or any person who misrepresents the age or the grade of any person for the purpose of securing the reduced fare herein provided for, shall be fined not less than Twenty-five nor more than One Hundred Dollars.

[1925 P.C.; Acts 1931, 42nd Leg., p. 828, ch. 343, § 1.]

#### Art. 4009. Free Transportation

Nothing in this title shall be construed to prohibit any express company from hauling or carrying free of charge any package or property of its actual bona fide officers, attorneys, agents and employees while in the service of such express company, nor to prevent any article being sent free to any orphan home or other charitable institution, nor to prohibit any telegraph or telephone company from transmitting free of charge any message of its bona fide officers, attorneys, agents or employees and their families while in the actual employment of such company or its receiver or lessee; provided the actual bona fide officers and employees upon annual salaries of railway telephone companies and telegraph companies are hereby permitted to exchange frank privileges and free transportation over their respective lines of railway and telegraph or telephone.

[Acts 1925, S.B. 84.]

#### Art. 4010. Advertising

Nothing in this title shall be construed to prevent any of the parties named in the first article hereof, publishers, editors or proprietors of newspapers or magazines, from making an exchange of mileage for advertising space in such newspaper or magazine, provided the contract between the railway companies and publishers, editors or proprietors of such newspapers or magazines shall be at the same rate as is charged the public generally for like service, providing that such contract shall be in writing and shall not be operative until approved by the Railroad Commission of this State, and filed in the office of such Commission, subject at all times to a reasonable public inspection.

[Acts 1925, S.B. 84.]

#### Art. 4011. Discrimination as to Persons

If any corporation, company, association, or person mentioned in Article 4005 shall grant to any sheriff, constable, or marshal a free pass over its lines of railroad, it shall issue like free

transportation to each and every sheriff, constable, or marshal who may make application therefor.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 239, ch. 87. § 1.]

#### Art. 4012. Evidence of Authority

Any veteran of any of the wars mentioned in this title, their wives, widows or members of their families, and any minister of religion, or any fireman, sister of charity or member of any religious society of like character, who desires to receive the benefits of free or reduced transportation as mentioned in this title shall present to the president, manager, officer, or person authorized to issue such transportation satisfactory evidence that he or she is entitled thereto, as herein provided. The officers entitled to the benefits of this law shall, when presenting themselves to the agent of any such railway or interurban railway company for the purchase of a ticket or to pay his fare, exhibit to such agent in case of the Adjutant General and State Rangers a certificate of the Secretary of State under seal, in case of sheriffs and constables and their deputies a certificate under seal of the county judge of the county where they hold office and in case of officers of a city or town a certificate under seal of the mayor of such city or town stating that such person is entitled to the reduced fare herein provided for. Sheriffs and constables shall designate in writing the two deputies entitled to the reduced rates herein provided for. If the sheriff or constable has designated two deputies who are entitled to such reduced rates, then no deputy of such sheriff or constable shall be entitled to free transportation under the provisions of the pass laws of this State.

[Acts 1925, S.B. 84.]

#### Art. 4013. Discrimination by Device

No corporation, company or person mentioned in the first article of this title shall directly or indirectly, by any special rate, rebate, drawback, or other device, demand, exchange, collect or receive from any person, firm, association or corporation a greater or less or different compensation for any service rendered or to be rendered, in the transportation of passengers, properties or messages, than it or he charges, demands, collects or receives from any other corporation, person, firm or association of persons doing business in this State for a like service under substantially similar circumstances and conditions except as is provided in this title, nor shall grant any free transportation or franking privilege to any corporation or person except as provided in this title.

[Acts 1925, S.B. 84.]

#### Art. 4013a. Discrimination by Device

No steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, tele-

graph or telephone company, shall directly or indirectly, by any special rate, rebate, drawback, or other device or exchange, demand, charge or collect or receive from any person, firm, association of persons or corporation a greater or less or different compensation for any service rendered, or to be rendered, in the transportation of passengers, property or messages, than it charges, demands, collects or receives from any other person, firm, association of persons or corporation for doing for him, them or it, a like service, if the transportation or transmission is a like kind of traffic or service under substantially similar circumstances and conditions.

[1925 P.C.]

#### Art. 4014. Reports, etc.

Each corporation, company or persons subject to the provisions of this title shall, as and when requested by the Railroad Commission of Texas, furnish said Commission with any and all information which may at any time be requested by said Commission relating to free transportation or right thereto which has been given to travel, or to have property or messages transported or transmitted, free over the lines of any such corporation, company or person, and if requested by said Commission to give the name and address of such person or persons to whom said rights have been granted, either free or at a reduced rate; any corporation, company or person, who shall fail or refuse to comply with the request of the Railroad Commission of Texas, under the provisions of this Act, shall, for each such failure and refusal, be subject to a penalty not exceeding One Thousand (\$1,000.00) Dollars, to recover which suit shall be brought by the Attorney General of Texas under the direction of the Railroad Commission; provided, however, that each such corporation, company or person, who complies with the provisions of this Act, from and after January 1, 1931, shall not be required to furnish the reports provided for under Article 4014, Revised Civil Statutes of 1925, which is hereby amended.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 261, ch. 156, § 1.]

#### Art. 4015. Penalty

Any corporation, company, association of persons or any person named in the first article of this title violating any provision of this title, except Article 4014, shall forfeit and pay to the State of Texas a penalty of five thousand dollars for each violation, to be recovered in suit by the State, brought by the Attorney General or by any county or district attorney under the direction of the Attorney General.

[Acts 1925, S.B. 84.]

#### Art. 4015a. Unlawfully Using Free Pass

Any person, other than the persons excepted by law, who uses such free ticket, free pass or free transportation, frank or privilege over any railway or other transportation line or sleeping or express car, telegraph or telephone line

mentioned in the preceding articles of this chapter, for any distance under the control and operation of either of said companies or under their authority, or shall knowingly or wilfully by any means or device whatsoever obtain, use or enjoy from any such company a less fare or rate than is charged, demanded, collected or received by any such company from any other person, firm, association of persons or corporations for doing for him, them or it, a like service, if the transportation or service is of a like kind of traffic or service under substantially similar circumstances and conditions, such person or such officer or agent who acts for such corporation or company thus favored, shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

#### Art. 4015b. Evading Law

Any director, officer, agent or any receiver, trustee, lessee or person acting for, or employed by, any company subject to the provisions of the preceding articles of this chapter, who alone, or with any other corporation, company, persons or party, shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing in said articles prohibited, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or wilfully suffer or permit any act, matter or thing so directed, required by said articles to be done, not to be done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of said articles, or shall aid or abet therein, shall be fined not less than one hundred nor more than one thousand dollars; and, if the offense for which any person shall be convicted under this article shall be unlawful discrimination in rates, fares or charges for the transportation of passengers or property, or the transmission of messages, such person may, in addition to the fines hereinbefore provided for, at the discretion of the jury, be imprisoned in the penitentiary for not less than six months nor more than two years.

[1925 P.C.]

#### Art. 4015c. May be Compelled to Testify

In any investigation or prosecution under any provision of this chapter, the court or tribunal in which the same is pending may compel any person to attend and give testimony, and to produce such papers, books and documents as may be desired by the State. No person shall be exempt from giving testimony therein, but no criminal action or proceeding shall be brought or prosecuted against such witness on account of any testimony so given or furnished by him.

[1925 P.C.]

#### Art. 4015d. Reduced Rate for Officers

Any steam railroad company or any electric interurban railroad company or any person or

persons operating the same, or any receiver or receivers, or lessee or lessees thereof, shall be permitted to transport between points wholly within this State at the reduced rate of one cent per mile, while traveling on official business connected with their respective offices, the following named peace officers, to-wit: the Adjutant General; State Rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. Any such peace officer who shall procure transportation over any such railroad between points in this State under the provisions of this article and shall use the same for any other than official business connected with the duties of his office, or any person not entitled to the benefits of this law who shall falsely represent himself as entitled to such privileges and shall purchase or offer to purchase transportation over any such railroad company at the rate provided for herein, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not exceeding six months, or both.

[1925 P.C.]

#### Art. 4015e. Collecting Fare from State or Political Subdivision by Officer or Employee Using Free Pass

Sec. 1. No officer or employee of the State of Texas, any county, city, town, or village, or of any municipality or political subdivision, using or accepting the benefits of any free pass or franking privilege of any railroad, interurban, motor bus or other transportation line, shall charge, or collect from the State of Texas, or from any county, city, town, village, municipality or political subdivision, the fare or charge which, otherwise, he would have paid to such railroad, interurban, motor bus or other transportation line, by reason of the trip for which such free pass or frank was used.

Sec. 2. Any officer or employee violating any provision of this Act shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding One Thousand (\$1,000.00) Dollars.

[Acts 1931, 42nd Leg., p. 267, ch. 161.]

#### Art. 4015f. Preference in Transportation

By the word "preference" as used in this article is meant any advantage, privilege, right, opportunity, precedence, choice, favor, priority, or gain that is or may be, or is sought or purposed to be accorded, granted, given, allowed, permitted or extended to any person, place, or thing, as against any other person, place, or thing in the receipt, carriage, transportation, movement, placing, storing, handling, caring for or delivery of any freight, commodity or article, or any railroad car or by any common carrier in this State, or any agent or employé thereof. Any person who shall ask, solicit, demand, or receive, directly or indirectly, from any person, corporate or otherwise, any money,

reward, favor, benefit, or other thing of value, or the promise of either, as a consideration for procuring or effecting, or with the intent of the person asking, soliciting, demanding, charging or receiving the same, or the promise thereof, that such person can or will, seek or undertake to procure or effect any preference in the receipt, carriage, transportation, storing, movement, placing, handling, caring for, or de-

livery of any freight, commodity or article, or any railroad car by any common carrier in this State or any agent or employé thereof, shall be fined not less than one hundred nor more than one thousand dollars and be imprisoned in jail not less than thirty days nor more than six months.

[1925 P.C.]

## TITLE 67

### FISH, OYSTER, SHELL, ETC.

Chapter	Article
1. Commissioner and Deputies .....	4016
2. Fish and Other Marine Life .....	4026
3. Marl, Sand and Shell .....	4051
4. Gulf States Marine Fisheries .....	4075a
5. Coastal Waters .....	4075b

#### CHAPTER ONE. COMMISSIONER AND DEPUTIES

Article	
4016.	The Commissioner.
4017.	Oath and Bond.
4018.	Duties and Powers.
4019.	To Report to Governor.
4020.	To Keep Record.
4021.	Fish and Oyster Deputies.
4022.	Oath and Bond of Deputies.
4023.	Salaries and Expenses.
4024.	Fees.
4025.	Disposition of Money.
4025a.	Contracts with United States Government; Davy Crockett National Forest.
4025b.	Publications by Commission Authorized; Sale; Price; Compensation for Selling Subscriptions.

#### Abolition of Office

*Acts 1929, 41st Leg., p. 265, ch. 118, § 1, abolished the office of the Game, Fish and Oyster Commissioner and created and vested in the Game, Fish and Oyster Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f.*

*Acts 1951, 52nd Leg., p. 850, ch. 476, § 1, abolished the office of the Game, Fish and Oyster Commission and created and vested in the Game and Fish Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commission and the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f-3.*

*The Game and Fish Commission was re-constituted and the name was changed to the Parks and Wildlife Department by Acts 1963, 58th Leg., p. 104, ch. 58. See Penal Auxiliary Laws, art. 978f-3a.*

#### Art. 4016. The Commissioner

The Game, Fish and Oyster Commissioner shall have his office in the State Capitol in the city of Austin, Texas, during his term of office which shall be two years, the first term to begin September 1, 1925.

[Acts 1925, S.B. 84.]

#### Art. 4017. Oath and Bond

The Game, Fish and Oyster Commissioner shall file with the Secretary of State a good

and sufficient bond to be approved by that official in the sum of ten thousand (\$10,000.00) dollars, with a surety company, conditioned that he will faithfully perform the duties of his office; the premium on such bond to be paid from any available funds appropriated to the use of the Game, Fish, and Oyster Commission. He shall take the oath prescribed for sheriffs, and when he shall file said bond and take said oath, he shall enter on the duties of his office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the State or any person injured, until the whole amount has been recovered.

[Acts 1925, S.B. 84.]

#### Art. 4018. Duties and Powers

The duties of the Commissioner shall be in the execution of the laws relating to game, fish, oysters and marine life, and such further duties as are imposed upon him by legislation. In the execution of these laws he shall exercise the power and authority given to sheriffs. The Commissioner is authorized to collect and enforce the payment of all taxes, licenses, fines and forfeitures, and all money due his department, by deputies or persons employed for that purpose, and to inspect all products so taxed, and to verify the weights and measures thereof; to examine, or have examined, all streams, lakes or ponds when requested to do so, for the purpose of stocking such waters with fish best suited to such locations and he shall superintend and have control in the propagation of fish in the State fish hatchery and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservation over which he may have control, or which may be established for such propagation. The Commissioner, or any of his deputies, may arrest without warrant anyone found violating any of the fish, game or oyster laws of Texas, and shall have the same right to execute original process as sheriffs.

[Acts 1925, S.B. 84.]

#### Art. 4019. To Report to Governor

The Commissioner shall make on the 31st day of August of each year, or as soon as practicable, not later than October 1st, a report to the Governor, showing the condition of the fish and oyster industry, which shall show the special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever

source and the disbursements therefor, with such observations as pertain to the industry. The report shall contain a statement of all stock furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subjects. The Governor shall order a sufficient number of copies of such report to be printed and filed in the Secretary of State's office for the purpose of free distribution to parties interested therein. For failure to make such report within the time specified, the Commissioner may, in the discretion of the Governor, be dismissed from his office.

[Acts 1925, S.B. 84.]

#### Art. 4020. To Keep Record

The Commissioner shall keep a well bound record book in which shall be recorded all special taxes collected, all licenses issued and license fees collected, all certificates issued for location of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked and the number and kinds of fish used in each; and showing all collections and disbursements in and from his office. The Commissioner shall keep an account with each person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc.

[Acts 1925, S.B. 84.]

#### Art. 4021. Fish and Oyster Deputies

The Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department, and such other shore and interior deputies as he may deem necessary for the enforcement of the law. All such deputies shall have and exercise the same powers and duties as the Commissioner, and be at all times subject to his orders, and shall hold their office at his pleasure. Each Deputy Fish and Oyster Commissioner shall be ex-officio game commissioner. No person shall hold such office of Deputy Commissioner who is not a citizen of the United States and of this State. All such Deputy Commissioners shall make a monthly report to the Commissioner of all funds collected by them, remitting along with said report all moneys collected by them during the said month.

[Acts 1925, S.B. 84.]

#### Art. 4022. Oath and Bond of Deputies

Before entering upon the duties of his office, each deputy shall file with the Commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Com-

missioner, and said bond and oath shall be governed by the provisions of Article 4017.

[Acts 1925, S.B. 84.]

#### Art. 4023. Salaries and Expenses

Out of any available funds, the Commissioner and all Fish and Oyster Deputies and employees of the Game, Fish and Oyster Commission shall be paid their salaries and expenses monthly, upon approval of the Commission, the Comptroller drawing his warrant in favor of each of said persons on the special funds appropriated for said purposes as follows: The Commissioner, thirty-six thousand dollars per annum, and not more than fifteen hundred dollars per annum for traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have been actually expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State Laws and charts necessary to the execution of the duties of his office; the chief deputy game, fish and oyster commissioner and all other deputy fish and oyster commissioners and employees of the Game, Fish, and Oyster Commission, except special game deputies, deputies employed at fresh water fish hatcheries and sand, shell and gravel deputies, shall be paid their salaries and expenses monthly upon approval of the Game, Fish and Oyster Commissioner out of the fish and oyster fund, the Comptroller drawing his warrant in favor of each of said persons on the fish and oyster fund, appropriated for said purposes, as follows: chief deputy game, fish and oyster commissioner, twenty-five hundred dollars per annum; deputies on boats, not to exceed one hundred twenty-five dollars per month; mates on boats, eighty dollars per month; shore deputies, not to exceed one hundred twenty-five dollars per month; lake deputies, not to exceed one hundred twenty-five dollars per month; assistant lake deputies, not to exceed seventy-five dollars per month; supervisor of coastal fisheries not to exceed one hundred fifty dollars per month. It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect license fees, to collect all rents on locations for planting oysters, to examine or have examined, all streams, lakes or ponds, when requested to do so, for the purpose of stocking such waters with fish best suited to such locations, and he shall superintend and have control in the propagation of fish in the State fish hatcheries, and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed a sum not to exceed fifteen hundred dollars per annum for traveling and other expenses to be paid on vouchers showing that such amounts have actually been

expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office.

[Acts 1925, S.B. 84.]

#### Art. 4024. Fees

In making arrests, summoning witnesses and serving process, the Commissioner or his deputies shall be allowed the same fees and mileage as sheriffs, the same to be charged and collected as are sheriff's fees.

[Acts 1925, S.B. 84.]

#### Art. 4025. Disposition of Money

Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and the residue thereof shall go to the general fund of this State. All funds collected by deputy commissioners along the coast for register certificates, licenses, and rents for locating private oyster beds, and such other charges relating to the fish and oyster laws as may be prescribed, shall be by such deputies paid over weekly to the Commissioner, who in turn shall deposit the same monthly in the State Treasury to the credit of the general revenue fund.

[Acts 1925, S.B. 84.]

#### Art. 4025a. Contracts with United States Government; Davy Crockett National Forest

Sec. 1. The Game, Fish and Oyster Commission shall have the right and authority to enter into an agreement with the United States Government, or with the proper authority thereof, for the protection and management of the wildlife resources of the National Forest lands under fence or any National Forest land which can be designated by a natural boundary such as a road, water or stream, canyon, brush, rock or rocks, bluff or island, within the State of Texas situated within Houston and Trinity Counties and known as the Davy Crockett National Forest, and for the restocking of such lands with desirable species of game animals, game birds and other animals and fish. Provided, however, that no agreement provided for herein shall be made by said Commission to cover more than forty thousand (40,000) acres at any one time during any five-year period.

Sec. 2. The Game, Fish and Oyster Commission of Texas shall have authority to prohibit all hunting and fishing within or upon any or all lands named in Section 1 of this Act for such period of time as may be necessary to safeguard any species of wildlife found thereon; shall have authority from time to time to prescribe open seasons for hunting and/or fishing therein, to prescribe the number, kind, sex and size of all game and non-game animals, fish and birds that may be taken therefrom or thereon, and to prescribe the conditions under which all birds, animals and fish may be taken within said area.

Sec. 3. Any person violating any of the provisions of this Act, or who shall hunt or fish upon said lands at any time other than the times specified by the Game, Fish and Oyster Commission, or who shall violate any rule or regulation promulgated by the Game, Fish and Oyster Commission under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined a sum of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

[Acts 1951, 52nd Leg., p. 84, ch. 54.]

#### Art. 4025b. Publications by Commission Authorized; Sale; Price; Compensation for Selling Subscriptions

Sec. 1. The Game and Fish Commission is hereby authorized to disseminate information to the public regarding wildlife values and its management.

Sec. 2. Any bulletin, book, or magazine, published by authority of this Act, may be sold for a price not to exceed the cost of publication and mailing. All moneys received from the sale of publications provided for herein shall be remitted to the Game and Fish Commission at its office in Austin not later than ten (10) days following the date of collection. Said moneys shall be deposited in the State Treasury to the credit of the Game and Fish Fund, and used for all purposes provided for by law.

Sec. 3. Any person, authorized to issue hunting and fishing licenses is, under the terms of the same bond and authority, hereby authorized to sell subscriptions to any monthly publication, prepared and published by the Game and Fish Commission authorized in Section 1 of this Act. Such person may retain ten per cent (10%) of each subscription payment as his fee for collecting and remitting same to the Game and Fish Commission.

Sec. 4. The amount of money collected for each subscription to any monthly publication provided herein, shall be recorded on a pre-numbered form bearing the name, complete address and length of the subscription period. Such prenumbered form shall be issued and accounted for in the same manner as hunting licenses.

[Acts 1957, 55th Leg., p. 438, ch. 212.]

### CHAPTER TWO. FISH AND OTHER MARINE LIFE

#### Article

- 4026. Property of State.
- 4026a. Repealed.
- 4026b. Sabine River; Upper Portion Declared Non-navigable; Hunting and Fishing Rights; Title of State Not Divested.
- 4027. Oyster Beds.
- 4028. Riparian Rights Prescribed.
- 4029. Private Fresh Waters.
- 4030. Fish and Oyster Fund.
- 4031 to 4032a. Repealed.
- 4032b. License to Fish in Fresh Waters.
- 4032b-1. License to Fish.
- 4032c. Residents Over 65 and Persons Under 16 Exempt from Hunting and Fishing License Requirements.



## Article

- 4033, 4034. Repealed.  
 4035. Application for Oyster Bed.  
 4036. Examining Location.  
 4037. Locator's Certificate.  
 4038. Rights of Locator.  
 4039. Limiting Location.  
 4040. To Maintain Markings.  
 4041. Rental on Location.  
 4042. Oyster Permit.  
 4043. Shipment of Oysters.  
 4044. Repealed.  
 4045. Seining, etc., in Closed Waters.  
 4046. Seining for Drum.  
 4047. Permit to Use Shrimp Seine.  
 4048. Repealed.  
 4049. Protection of Reservation.  
 4049a. Hatcheries and Propagation.  
 4049b. Condemnation of Lands and Water Rights, etc., for Hatcheries.  
 4049c. Purchase or Condemnation of Lands, Water Rights, etc., for Fresh Water Hatcheries and for Constructing and Maintaining Channels.  
 4050. May Take Brood Fish.  
 4050a. Consent to Establishment of Migratory Bird Reservations by Federal Government.  
 4050b. Consent to Federal Statute Providing for Federal Aid to States in Wildlife Restoration Projects.  
 4050c. Removal of Rough Fish and Turtles from Public Fresh Waters.  
 4050c-1. Rough Fish; Taking by Spear Gun, Spear, or Bow and Arrow from Public Fresh Waters Authorized.  
 4050d. Consent to Federal Statute Relating to Fish Restoration and Management.  
 4050e. Commercial Fisheries Research and Development.  
 4050f. Sale of Shellfish Taken from Polluted Areas.

## Saved From Repeal

*Acts 1973, 63rd Leg., p. 413, ch. 185, enacting the Coastal Public Lands Management Act of 1973, provided, in part, in § 18: "It is specifically provided that this Act does not repeal Chapters 2 and 3, Title 67, Revised Civil Statutes of Texas, 1925, as amended \* \* \*". See article 5415e-1, § 18.*

## Abolition of Office

*Acts 1929, 41st Leg., p. 265, ch. 118, § 1 abolished the office of the Game, Fish and Oyster Commission and created and vested in the Game, Fish and Oyster Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f.*

*Acts 1951, 52nd Leg., p. 850, ch. 476, § 1, abolished the office of the Game, Fish and Oyster Commission and created and vested in the Game and Fish Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f-3.*

*The Game and Fish Commission was reconstituted and the name was changed by the Parks and Wildlife Department by Acts 1963, 58th Leg., p. 104, ch. 58. See Penal Auxiliary Laws, art. 978f-3a.*

## Art. 4026. Property of State

All fish and other aquatic animal life contained in the fresh water rivers, creeks and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this State are hereby declared to be the property of the people of this State. All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said waters and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect the taking and conservation of fish, oysters, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters, and all other kinds and forms of marine life, or relate to sand, gravel, marl, mud shell and all other kinds of shell, the Game, Fish and Oyster Commissioner shall have jurisdiction over and control of, in accordance with and by the authority vested in him by the laws of this State.

[Acts 1925, S.B. 84.]

## Art. 4026a. Repealed by Acts 1967, 60th Leg., p. 1959, ch. 730, § 15, eff. Sept. 1, 1967

See, now, Penal Auxiliary Laws, art. 978j-1.

## Art. 4026b. Sabine River; Upper Portion Declared Non-navigable; Hunting and Fishing Rights; Title of State Not Divested

That portion of the Sabine River located between its source and its juncture with the east boundary line of Hunt County shall hereafter be considered not a navigable stream, anything in Article 5302, Revised Civil Statutes of Texas, to the contrary notwithstanding; provided, however, that this Act is not intended in any way to divest the State of Texas of whatever title it may have to the bed or waters of said stream; and provided that the above described upper portion of said stream shall only be considered non-navigable, as a result of this Act, in so far as all hunting and fishing rights on and along said stream are concerned.

[Acts 1955, 54th Leg., p. 949, ch. 371, § 1.]

## Art. 4027. Oyster Beds

All oyster beds not designated private shall be public. All natural oyster beds and reefs of this State shall be public. A natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years.

[Acts 1925, S.B. 84.]

**Art. 4028. Riparian Rights Prescribed**

Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters. The Commissioner may require the owner of oysters claimed to be produced on such lands, when such oysters are offered for sale, to make an affidavit that such oysters were produced on such lands. If said creek, bayou, lake or cove is not so included, then the exclusive right of the riparian owner shall, wherever the width of such creek, bayou, lake or cove is two hundred yards or less, extend to the middle thereof, and wherever the width of such waters is more than two hundred yards, extend one hundred yards from shore. The right of the riparian owner for planting oysters along any bay shore in this State shall extend one hundred yards into the bay from high water mark or where the land survey ceases. The riparian owner's right to any natural oyster bed located on such one hundred yard reservation shall not be exclusive.

[Acts 1925, S.B. 84.]

**Art. 4029. Private Fresh Waters**

Such of the fresh water lakes, rivers, creeks and bayous within this State as may be embraced in any survey of private land shall not be sold, but shall remain open to the public. If the Commissioner stocks them with fish, he is authorized to protect same for such time and under such rules as he may prescribe.

[Acts 1925, S.B. 84.]

**Art. 4030. Fish and Oyster Fund**

All funds collected by the Game, Fish and Oyster Commission from the sale of commercial fishermen's licenses, fish dealers licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as "Fish and Oyster Fund" and, together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and the employment of deputies to carry out and enforce the provisions of this Act.

[Acts 1925, S.B. 84.]

**Arts. 4031, 4032. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7**

4 West's Tex.Stats. & Codes—17

**Art. 4032a. Repealed by Acts 1949, 51st Leg., p. 864, ch. 466, § 14****Art. 4032b. License to Fish in Fresh Waters****Resident Fishing License**

Sec. 1. It shall be unlawful for any resident of this State to fish in any of the fresh waters of this State, outside of the county of his residence and adjacent counties thereto, without first having procured from the Game, Fish and Oyster Commission, or one (1) of its bona fide employees, or a county clerk or an authorized agent, a resident fishing license, the fee for which shall be One Dollar and sixty-five cents (\$1.65). Of this amount, the officer issuing same shall retain fifteen cents (15¢) as his fee for collecting same. No fee or license of any kind shall be required of a person for the right to fish in the county of his residence and counties adjacent thereto except as provided in Section 3 of this Act.

**Non-resident Fishing License**

Sec. 2. It shall be unlawful for any person who is a non-resident of this State, or any person who is an alien, to fish in the fresh waters of this State without first having procured from the Game, Fish and Oyster Commission, or one of its bona fide employees, or a county clerk or an authorized agent, a non-resident fishing license, the fee for which shall be Five Dollars and twenty-five cents (\$5.25). Of this amount, the issuing officer shall retain twenty-five cents (25¢) as his fee for collecting same. Provided that such non-resident may fish in said waters under a five-day license, the fee for which shall be One Dollar and sixty-five cents (\$1.65), and which shall be valid for only five (5) consecutive days, including day of issuance, the date of which shall be stated thereon. The issuing officer shall retain fifteen cents (15¢) of said amount as his collecting fee.

**Exceptions**

Sec. 3. No person under seventeen (17) years of age shall be required to possess any of the licenses provided for in this Act. No resident fishing license shall be required of a resident citizen of this State who holds a commercial fishing license issued in this State. Provided that all residents of this State over the age of seventeen (17) years shall hold a resident fishing license when using artificial bait or lure. Provided further that all residents of this State over the age of seventeen (17) years shall hold a resident fishing license when using live bait outside of the county of his residence.

**Definition**

Sec. 4. "Non-resident" as used in this Act shall mean any citizen of the United States of America who is not a citizen of the State of Texas and who has not continuously, for six (6) months next preceding issuance of the fishing license to him, been an actual bona fide resident of the State of Texas.

## Duplicate License

Sec. 5. In the event the holder of a license provided for in this Act shall have lost such license, or same shall have been destroyed, such license holder may file with the Game, Fish and Oyster Commission or its bona fide employee, or a county clerk, or an authorized agent, an application, in the form of an affidavit as to the facts of such loss or destruction, which affidavit shall contain the serial number of the license so lost or destroyed; whereupon said Commission, or its bona fide employee, or a county clerk, or an authorized agent, may issue to such person a duplicate fishing license, the fee for which shall be fifty cents (50¢). Of this amount, twenty-five cents (25¢) may be retained by the issuing officer as his fee for issuing same.

## Form of License

Sec. 6. Each license issued under the provisions of this Act shall have printed across its face, the year for which it is issued, and shall bear the name and address and residence of the person to whom issued, and shall state the approximate weight, height, age, color of hair, and color of eyes of such person, in order that proper identification may be had in the field. Such resident, non-resident and duplicate fishing licenses shall be dated the date of issuance and shall remain in effect until, and including the last day of August thereafter. Non-resident fishing licenses shall have printed thereon the following:

"This license does not entitle the holder thereof to fish upon the enclosed and posted lands of another without the consent of the owner or agent."

It shall be unlawful for any person to issue or accept any license required by the provisions of this Act, except on a form provided by the Game, Fish and Oyster Commission.

## License Deputies

Sec. 7. Any person designated by the Executive Secretary of the Game, Fish and Oyster Commission, its bona fide employees, and the county clerk of each county in this State are hereby authorized to issue any license provided for by this Act, or that may hereafter be provided for, and all persons so issuing licenses shall fill out correctly and preserve for the use of said Commission the stubs attached thereto; and shall keep a complete and correct record of all licenses issued, showing the name and place of residence of each licensee and the serial number and date of the license issued. The county clerk and all other persons issuing licenses shall, within ten (10) days after the close of each calendar month, prepare a detailed report showing the serial number and date of each license issued during the month covered by the report, and the name and address of the person to whom issued, and shall forward such report, with remittance of fees due the State, to the Game, Fish and Oyster Commission, at Austin, and said Commission shall credit such county clerk, or other person,

with the amount so remitted. As soon as possible after the licenses in a license book have all been issued, and only the stubs remain therein, such county clerk or other person shall forward such used license book to the Game, Fish and Oyster Commission, at Austin, in order that said Commission may furnish necessary information regarding holders of licenses to any officers of the State. All unissued licenses shall be returned to the Game, Fish and Oyster Commission, at Austin, when request therefor is made by said Commission.

## Disposition of Fees and Fines

Sec. 8. All moneys received from the sale of the licenses provided for herein, after the payment of the fees allowed under this Act have been deducted, and all moneys received from penalties assessed for violations of this Act and for violations of fresh water fishing laws not otherwise disposed of by law, after deduction of fees allowed by law, shall be remitted to the Game, Fish and Oyster Commission, at Austin, and be deposited by said Commission in the State Treasury, to the credit of the Special Game and Fish Fund, which fund shall be used for the purpose of building and maintaining fish hatcheries, fairly distributed over the State of Texas, and for the propagation and distribution and protection of fish in the State of Texas, and for the dissemination of information pertaining to the conservation of fish in this State. All expenditures shall be verified by affidavit to the Game, Fish and Oyster Commission; and on the approval of such expenditures by the Executive Secretary of said Commission, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures, in favor of the person claiming the same, such warrant to be paid out of the Special Game and Fish Fund. All moneys and all balances now in such fund from moneys already paid into the State Treasury, or that may hereafter be paid into said fund, are made available as soon as paid into the State Treasury, and are hereby specifically appropriated to the use of the Game, Fish and Oyster Commission, for the several purposes herein specified.

## False Swearing

Sec. 9. Any person who, in making an affidavit as provided for in this Act, shall knowingly make a false affidavit of fact, shall be deemed guilty of false swearing and shall be punished in accordance with the provisions of Article 310, Penal Code of Texas, 1925.

## Fishing Under License of Another

Sec. 10. It shall be unlawful for any person to fish under the license issued to any other person, or to permit any other person to fish under a license issued to him.

## Effective Date of Act

Sec. 11. This Act shall become effective on the first day of September, 1949.

## Penalty

Sec. 12. Any person who shall fish in any of the fresh waters of this State, without the license required of him by this Act, or any person who shall fish under the license of another, or who permits another to fish under his license, or who fails or refuses, on demand by any officer, to show such officer his fishing license required of him by this Act, or who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100).

## Forfeiture

Sec. 13. Any person who has been convicted of violating any of the provisions of this Act shall thereby automatically forfeit his fishing license for the remainder of the license period, and shall not be entitled to receive from said Commission, or its agent, a license to fish for one (1) year immediately following the date of his conviction; and it shall be unlawful for any person so convicted to purchase or possess a fishing license or to fish in this State, for a period of one (1) year immediately following date of such conviction. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200).

## Repeal

Sec. 14. Article 4032a, Revised Civil Statutes of Texas, 1925, and all other Laws, General, Special or Local, or parts of Laws, in conflict with this Act, are hereby expressly repealed.

## Partial Invalidity

Sec. 15. It is hereby declared to be the Legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any Section, word, clause, sentence or part of this Act shall be declared unconstitutional, shall in no event affect any other Section, word, clause, sentence or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, Section, clause, or part thereof, irrespective of the fact that any other Section, sentence, clause or part thereof may be declared invalid.

[Acts 1949, 51st Leg., p. 864, ch. 466.]

## Art. 4032b-1. License to Fish

## Fishing License

Sec. 1. It shall be unlawful for any person to fish in any of the waters of this State without first having procured from the Game and Fish Commission, or one (1) of its bona fide employees, or a county clerk or an authorized agent, a fishing license, the fee for which shall be Four Dollars and Twenty-Five Cents (\$4.25). Of this amount, the officer issuing same shall retain Twenty-Five Cents (\$.25) as his

fee for collecting same, except that employees of the Game and Fish Commission shall not be entitled to retain said fee.

## Saltwater Sportfishing License

Sec. 1A. A special three (3) day saltwater sportfishing license may be issued to a resident or non-resident fisherman for a fee of One Dollar and Twenty-five Cents (\$1.25). Of this amount, the officer issuing the same shall retain Twenty-five Cents (\$.25) as the fee for collecting same, except that employees of the Parks and Wildlife Department shall not be entitled to retain said fee.

## Tourist Groups

Sec. 1B. No license shall be required of groups of 25 persons or more who are visiting as tourists and do their fishing as a group.

## Exceptions

Sec. 2. No persons under seventeen (17) years of age and no person over sixty-five (65) years of age shall be required to possess the license provided for in this Act. No persons who are residents of the Republic of Mexico and who are traveling in this country on a visa granted by the United States Government shall be required to possess a license to fish in the coastal waters of this State. No person, or member of such person's immediate family, shall be required to hold the license provided for in this Act when fishing upon property he owns or upon which he resides. No license shall be required of persons fishing with trot-line, throw line, or ordinary pole and line having no reel or other winding device attached when fishing in the county of his residence. No other fishing license shall be required of a person who holds a commercial fishing license issued in this State.

## Exemption for Blind Persons

Sec. 2A. A blind person, as defined in Section 1, Chapter 227, Acts of the 59th Legislature, Regular Session, 1965,<sup>1</sup> is entitled to receive a fishing license without paying the license fee required in Section 1 of this Act. The Parks and Wildlife Department may make regulations concerning proof of eligibility under this section and shall issue the license to eligible applicants on the payment of a fee of twenty-five cents (25¢), fifteen cents (15¢) of which may be retained by the person issuing the license as his collection fee. Employees of the Parks and Wildlife Department may not retain the collection fee.

<sup>1</sup> Article 678d-1, § 1.

## Duplicate License

Sec. 3. In the event the holder of a license provided for in this Act shall have lost such license, or same shall have been destroyed, such license holder may file with the Game and Fish Commission or its bona fide employee, or a county clerk or an authorized agent, an application, in the form of an affidavit as to the facts of such loss or destruction, which affidavit shall contain the serial number of the li-

cense so lost or destroyed; whereupon said Commission or its bona fide employee, or a county clerk, or an authorized agent, may issue to such a person a duplicate fishing license, the fee for which shall be fifty cents (50¢). Of this amount twenty-five cents (25¢) may be retained by the issuing officer as his fee for issuing same, except that employees of the Game and Fish Commission shall not be entitled to retain such fee.

#### Form of License

Sec. 4. (a) Each license issued under the provisions of this Act shall have printed across its face the year for which it is issued and shall bear the name and address and residence of the person to whom issued, and shall state the approximate weight, height, age, color of hair, and color of eyes of such person, in order that proper identification may be had in the field. Fishing licenses shall have printed thereon the following: "This license does not entitle the holder thereof to fish upon the enclosed and posted lands of another without the consent of the owner or his agent." It shall be unlawful for any person to issue or accept any license required by the provisions of this Act, except on a form provided by the Game and Fish Commission.

(b) The license is valid for a period of one year following the date of its issuance. A duplicate license is valid for the period that the original license was valid.

#### License Deputies

Sec. 5. Any person designated by the Executive Secretary of the Game and Fish Commission, its bona fide employees and the county clerk of each county in this State are hereby authorized to issue any license provided for by this Act, or that may hereafter be provided for, and all persons so issuing licenses shall fill out correctly and preserve for the use of said Commission the stubs attached thereto; and shall keep a complete and correct record of all licenses issued, showing the name and place of residence of each licensee and the serial number and the date of the license issued. The county clerk and all other persons issuing licenses shall within ten (10) days after the close of each calendar month, prepare a detailed report showing the serial number and date of each license issued during the month covered by the report, and the name and address of the person to whom issued, and shall forward such report, with remittance of fees due the State, to the Game and Fish Commission at Austin, and said Commission shall credit such county clerk, or other person, with the amount so remitted. By the 10th of the next month after the licenses in a license book have all been issued, and only the stubs remain therein, such county clerk or other person shall forward such used license book to the Game and Fish Commission at Austin, in order that said Commission may furnish necessary information

regarding holders of licenses to any officers of the State. All unissued licenses shall be returned to the Game and Fish Commission at Austin when request therefor is made by said Commission.

#### Disposition of Fees and Fines

Sec. 6. All moneys received from the sale of licenses provided for herein, after the payment of the fees allowed under this Act have been deducted, and all moneys received from penalties assessed for violations of this Act, and for violations of any fresh-water or salt-water fishing laws not otherwise disposed of by law, after deduction of fees allowed by law, shall be remitted to the Game and Fish Commission at Austin, and be deposited by said Commission in the State Treasury to the credit of the Special Game and Fish Fund, and shall be used for the propagation, distribution, management and protection of fish in all salt waters and all fresh waters within this State, and for the opening of fish passes into the Gulf of Mexico, including control of undesirable species of fish, and for the dissemination of information pertaining to the conservation of fish in this State. All expenditures shall be verified by affidavit to the Game and Fish Commission; and on the approval of such expenditures by the Executive Secretary of said Commission, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures, in favor of the person claiming the same, such warrant to be paid out of the Special Game and Fish Fund.

#### Fishing Under License of Another

Sec. 7. It shall be unlawful for any person to fish under the license issued to any other person, or to permit any other person to fish under a license issued to him.

#### Effective Date of Act

Sec. 8. This Act shall become effective on the 1st day of September, 1957.

#### Penalty

Sec. 9. Any person who shall fish in any waters of this State without the license required of him by this Act, or any person who shall fish under the license of another, or who permits another to fish under his license, or who fails or refuses on demand by any officer, to show such officer his fishing license required of him by this Act, or who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100).

[Acts 1957, 55th Leg., p. 498, ch. 239; Acts 1971, 62nd Leg., p. 2390, ch. 745, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 259, ch. 125, § 3, eff. Sept. 1, 1973; Acts 1973, 63rd Leg., p. 697, ch. 293, § 1, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1370, ch. 523, § 1, eff. Sept. 1, 1974.]

**Art. 4032c. Residents Over 65 and Persons Under 16 Exempt from Hunting and Fishing License Requirements**

All residents of this State who are sixty-five (65) years of age or over and all persons who are under sixteen (16) years of age shall be entitled to all hunting and fishing privileges for which a commercial license is not required, without obtaining a license for such non-commercial privileges and without payment of any fee.

[Acts 1955, 54th Leg., p. 797, ch. 289, § 1.]

**Arts. 4033, 4034. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7**

**Art. 4035. Application for Oyster Bed**

Any person who is a citizen of the United States or any domestic corporation shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Commissioner describing the location desired. A fee of twenty dollars cash must accompany such application.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4036. Examining Location**

When the application and fee provided for in the preceding article have been received by the Commissioner he shall examine thoroughly the location desired, as soon as practicable, with tongs, dredge or any other efficient means. If the same be not a natural oyster bed or reef, and exempt from location by any article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes shall be not less than two inches in diameter, and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and maintain under the direction of the Commissioner a buoy at each corner of his oyster claim farthest from the land. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than one hundred yards from shore.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4037. Locator's Certificate**

The Commissioner shall give the locator a certificate signed and sealed by the Commissioner. Such certificate shall show the date of

application, date of survey, number, description of metes and bounds with reference to the points of the compass and natural and artificial objects by which said location can be found and verified. The locator shall, before such certificate is delivered to him, pay the Commissioner surveyor's fees and all other expenses connected with establishing such location. If such sums, as costs of the location and establishment of the claim, are less than the twenty dollars paid to the Commissioner, the difference in amount shall be returned to such locator by the Commissioner. If such expenses amount to more than twenty dollars, the deficit shall be paid to the Commissioner by the locator.

At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificate shall be admissible in evidence under the same rule governing the admission of deeds or certified copies thereof.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4038. Rights of Locator**

Any person who shall be granted a certificate of location as provided for in the preceding article shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their possessions, as long as he maintains all stakes and buoys in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4039. Limiting Location**

No person, firm or corporation shall ever own, lease or otherwise control more than one hundred acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm or corporation that now holds more than one hundred acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4040. To Maintain Markings**

Any person, firm or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for by law, in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location or any part thereof; provided that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4041. Rental on Location**

The owner or locator of private oyster beds under the foregoing provisions shall not be required to pay any rentals on such locations for a period of five years, or till such time as he shall begin to market or sell oysters from such location or bed. When such locator shall begin to sell or market oysters from such location, he shall pay the State one dollar and fifty cents per acre per annum and two cents a barrel on oyster sales. Failure to pay such rental by the first day of March of each year shall annul and be a forfeiture of his lease. And if oysters are not marketed or sold from such location within five years from the date of location, such location shall become void.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was specifically saved from repeal by art. 5415e, § 14.*

**Art. 4042. Oyster Permit**

Any person who is a citizen of the State of Texas, or any corporation chartered by the State to engage in the culture of oysters or transact business in the purchase and sale of oysters and fish, and composed of American citizens, wishing to plant oysters on their own oyster locations or to take oysters from oyster reefs and public waters of the State for the purpose of preparing them for market, shall make application to the Commissioner for permission to do the same. In such application the applicant shall set out distinctly the purpose for which he desires such oysters and also the number or amount that he desires to take from the beds and waters mentioned. The Commissioner may grant such permit or he may refuse to do so. If he should grant such permit, he shall require the applicant to take the oysters he is authorized to take from beds

or reefs designated by such Commissioner and name them in the permit, and it shall be unlawful for any person to take oysters of less size than three and one-half inches from hinge to mouth from any such designated beds or reefs unless authorized to do so by the Commissioner; he shall mark off the exact area of such beds or reefs from which such oysters shall be taken; he shall designate the bottoms on which such oysters shall be deposited, if they are taken to be prepared for market; he shall require the applicant to cull the oysters on the grounds where they are to be located; he shall state what implements such as tongs and dredges shall be used in taking such oysters, and he shall make and enforce all other regulations he may think necessary to protect and conserve the oysters on such public reefs or beds. All oysters taken from or deposited in the public waters of this State as herein provided shall become the personal property of the person or corporation so taking or depositing them. Such person or corporation shall, by buoys or stakes or by fences, clearly and distinctly mark the boundaries of the private bed planted, or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of any one shall be permitted for taking such oysters unless the boundaries of such beds and deposits are established and maintained.

[Acts 1925, S.B. 84.]

**Art. 4043. Shipment of Oysters**

It shall be unlawful for any transportation company operating within this State, its officers, agent or employees, to receive for shipment, or to ship, within the boundaries of this State from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing. Nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents or employees, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the affidavit of the person or persons offering such oysters for shipment.

[Acts 1925, S.B. 84.]

**Art. 4044. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7****Art. 4045. Seining, etc., in Closed Waters**

It shall be unlawful for any person at any time to place, to set or drag any seine or net, or to carry on, over or into the waters hereinafter referred to, or to have in his possession or to carry such seine or net by vehicle or in any other way to any point or place within one mile of such waters, or to use any other device or method for taking fish, other than the ordinary pole and line or cast-net or minnow-seine of not more than twenty feet in length for catching bait, within the waters described in

Article 941 of the Penal Code. Nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes as are therein enumerated at any time of the year except during the months of November and December, which months shall constitute a closed season on flounders in all coastal waters of the State. The Commissioner, when he has reason to believe it is best for the protection and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal water, is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with a hook and line or cast-net or minnow-seine of not more than twenty feet in length. Before so closing any such waters, the Commissioner shall give notice of his intention to do so at least two weeks prior to such closing, giving the reason why action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or set a net or use a gig or spear and light in taking fish from such waters for the period which the Commissioner in said notice shall declare same to be closed. The Commissioner shall have the authority, when proper hearing has been had and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such area to seining, netting, gigging and fishing of all sorts. The Commissioner shall have power to seize and keep such seines as are used in violation of any provision of this article, in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor.

[Acts 1925, S.B. 84.]

#### Art. 4046. Seining for Drum

Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Commissioner for permission to seine for drum fish in such waters. In his application for permission to seine for drum he shall make oath that such fish are seriously damaging his oysters, and that if he is permitted to seine for such fish in such waters, he will not take or destroy any other food fish, but will throw them back into the water. If the Commissioner is satisfied that such damage is being done, he may grant such permission, specifying in such permit the length of time in which it is to be used, and the claim or reef on which it is to be used. Such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining, and no seine shall be dragged except in his presence, and for which a person obtaining the permission to seine as set forth above, shall pay to the Commissioner two dollars and fifty cents per day.

[Acts 1925, S.B. 84.]

#### Art. 4047. Permit to Use Shrimp Seine

The Commissioner may permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner for a permit to use such seine, net or other device for catching shrimp, and the Commissioner shall fix and establish the mesh, construction, depth and length of such seine or net or other device so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine or other device officially and issue such permit, and shall designate in what waters and localities such seines or nets shall be used. Any such nets or seines or devices used in violation of this article shall be declared a nuisance and the Commissioner shall abate and destroy the same, and no suit shall be maintained in the courts for such abatement and destruction.

[Acts 1925, S.B. 84.]

#### Art. 4048. Repealed by Acts 1971, 62nd Leg., p. 1667, ch. 471, § 9, eff. May 27, 1971

See, now, Penal Auxiliary Laws, art. 962a.

#### Art. 4049. Protection of Reservation

It shall be unlawful to bring into or keep on any fish hatchery or reservation for the propagation or exhibition of any birds, fowls or animals, any cat, dog or other predacious animal, and any such animal found on the grounds of such hatcheries or reservation is held to be a nuisance, and the deputy in charge shall abate and destroy it as a nuisance, and no suit for damages shall be maintained therefor.

[Acts 1925, S.B. 84.]

#### Art. 4049a. Hatcheries and Propagation

The Game, Fish and Oyster Commissioner of this State is hereby authorized to construct and maintain salt water hatcheries, and propagation farms for fish, oysters and game, or either of same, on islands owned by the State of Texas in the coastal waters of the Gulf of Mexico touching this State; and the cost and expenses thereof shall be borne out of the money available to said commissioner for the enforcement of the game, fish and oyster laws of this state.

[Acts 1927, 40th Leg., p. 258, ch. 180, § 1.]

#### Art. 4049b. Condemnation of Lands and Water Rights, etc., for Hatcheries

Sec. 1. The State of Texas through the Game, Fish and Oyster Commission shall have the right, power and authority to enter upon, condemn and appropriate lands, water rights, easements, right of ways, and property of any person or corporation in Smith County, Texas, for the purpose of erecting, constructing, enlarging and maintaining fish hatcheries, buildings, necessary equipments, roads and passageways to said hatcheries in Smith County, Texas, provided the manner and method of such condemnation, assessment, payment of damages



therefore shall be the same as now provided by law in the case of railroads.

Sec. 2. Condemnation suits brought under this Act shall be brought in the name of the State by the Attorney General in Smith County. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings and all damages and pay or compensation for property awarded in such proceedings shall be paid by the State of Texas by warrant drawn by the Comptroller against any fund in the State Treasury appropriated to the Game, Fish and Oyster Commission for the use of constructing, and maintaining fish hatcheries. [Acts 1929, 41st Leg., 1st C.S., p. 67, ch. 31.]

**Art. 4049c. Purchase or Condemnation of Lands, Water Rights, etc., for Fresh Water Hatcheries and for Constructing and Maintaining Channels**

Sec. 1. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right to acquire by purchase any and all land in this State that may be deemed necessary for the construction, maintenance, enlargement and operation of fresh water fish hatcheries, and for the construction and maintenance of passes leading from one body of tide-water to another. Upon approval of the title by the Attorney General of this State said Game, Fish and Oyster Commission is hereby authorized to pay for such land so purchased out of any money that has been, or may be hereafter appropriated to it by the Legislature.

Sec. 2. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right, power and authority to enter upon, condemn, and appropriate lands, easements, rights-of-way and property of any person or corporation in the State of Texas for the purpose of erecting, constructing, enlarging and maintaining fish hatcheries, buildings, equipment, roads, passage-ways to said hatcheries and also shall have the right, power and authority to enter upon, condemn and appropriate lands, easements, rights-of-way and property of any person or corporation in this State for the purpose of constructing, enlarging and maintaining passes or channels from one body of tide-water to another body of tide-water in this State. Provided that the manner and method of such condemnation, assessment, and payment of damages therefor shall be the same as is now provided by law in the case of railroads.

Sec. 3. Condemnation suits brought under this Act shall be brought in the name of the State of Texas by the Attorney General at the request of the Game, Fish and Oyster Commission in Travis County, Texas. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in

such proceedings shall be paid by the State of Texas by warrant drawn by the Comptroller against any fund in the State Treasury heretofore or hereafter appropriated to the Game, Fish and Oyster Commission.

[Acts 1939, 46th Leg., p. 338.]

**Art. 4050. May Take Brood Fish**

It shall be lawful for the Commissioner or the United States Commissioner of Fisheries and his duly authorized agents to take at any time and in any manner from the public fresh waters of this State all brood fish required by them in operation of the State and Federal Hatcheries.

[Acts 1925, S.B. 84.]

**Art. 4050a. Consent to Establishment of Migratory Bird Reservations by Federal Government**

Consent of the State of Texas is given to the acquisition by the United States of America by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the State of Texas, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the Act of Congress approved February 18, 1929, entitled: "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes"; reserving, however, to the State of Texas, full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of said Act of Congress.

[Acts 1931, 42nd Leg., p. 38, ch. 30, § 1.]

**Art. 4050b. Consent to Federal Statute Providing for Federal Aid to States in Wildlife Restoration Projects**

The State of Texas hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public, No. 415, 75th Congress),<sup>1</sup> and the Game, Fish and Oyster Commission is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and Rules and Regulations promulgated by the Secretary of Agriculture thereunder.

[Acts 1939, 46th Leg., p. 337, § 1.]

<sup>1</sup> 16 U.S.C.A. § 669 et seq.

**Art. 4050c. Removal of Rough Fish and Turtles from Public Fresh Waters**

Authority of Parks and Wildlife Department

Sec. 1. The Parks and Wildlife Department is authorized to take rough fish and turtles from any of the public fresh waters of this State by means of crews operated by the Department through the use of seines or nets or other devices.

Permit to Take Rough Fish and Turtles; Denial; Application; Time

Sec. 2. The Department may issue to any qualified applicant a permit to take rough fish and turtles from the public fresh waters of this State when the Department finds that rough fish or turtles exist in any such waters in numbers detrimental to the propagation and preservation of game fish. The Department may not issue a permit to any applicant whose record, within the knowledge of the Department, shows repeated violations of the fishing laws of the State to an extent that the Department deems the applicant's conduct to be in flagrant disregard of fish conservation laws, or if the applicant has had a permit issued under this Act revoked for a violation of the law or a regulation of the Commission. Each permit shall apply to a single lake or portion of a lake, stream, or river as determined by the Department. A permit is valid for the period of time set by the Parks and Wildlife Commission, but for a period of at least three months.

Fee of Permittee; Minimum Total Poundage; Regulations

Sec. 3. (a) The Parks and Wildlife Commission shall set a fee which permittees under this Act shall pay to the department for each pound of rough fish and turtles taken from the fresh waters of this State. The Commission shall also set the minimum total poundage that each permittee must take under the permit. The minimum standards set under this section may vary according to lake, stream, or river or portion of a lake, stream, or river.

(b) The Parks and Wildlife Commission shall make regulations on the types of equipment, boats, net, seines, or other devices that may be used by permittees under this Act according to the lake, stream, or river, or portion of a lake, stream, or river.

Bond of Permittee; Revocation of Permit; Compliance with Fishing License and Requirements

Sec. 4. (a) Each permittee under this Act shall execute a bond in an amount determined by the Parks and Wildlife Department payable to the Executive Director of the Parks and Wildlife Department and conditioned on the payment of the fee set by the Parks and Wildlife Commission for each pound of fish or turtle taken by the permittee under the permit, on the taking of the minimum total poundage required to be taken by the permittee, and on the faithful compliance with the regulations of the Parks and Wildlife Commission concerning the taking of rough fish and turtles under the per-

mit. The bond must be approved by the executive director.

(b) The Parks and Wildlife Department shall revoke the permit of any person who takes rough fish or turtles in violation of the regulations of the Commission or in violation of the laws of this State relating to the taking of fish.

(c) Nothing in this Act authorizes a person to take fish or turtles without having acquired a commercial fishing license and having complied with seine and net tag requirements.

Sale or Use of Fish and Turtles Removed; Disposition of Proceeds

Sec. 5. Rough fish and turtles removed under the provisions of this Act may be sold. Rough fish and turtles taken by Commission operated crews may be used for feed for hatchery fishes and all surplus thereof shall be sold by said Commission at the highest price obtainable. All moneys received from the sale of fish and turtles by said Commission taken hereunder shall be placed in the Special Game and Fish Fund and be continuously available for defraying the expenses and continuing the work of rough fish removal by said Commission.

Rough Fish Defined

Sec. 6. "Rough fish" as used in this Act shall include those freshwater fishes having no sporting value, the predatory, bony or rough-fleshed species, or any species of fish whose numbers should be controlled in order to protect and encourage game fish; provided, however, that the term "rough fish" shall not include black bass, white bass, crappie, bream, sunfish, channel catfish or yellow catfish, which are, for the purposes of this Act, "game fish."

[Acts 1949, 51st Leg., p. 783, ch. 422; Acts 1971, 62nd Leg., p. 1413, ch. 391, § 1, eff. May 26, 1971; Acts 1973, 63rd Leg., p. 1359, ch. 516, § 1, eff. June 14, 1973.]

**Art. 4050c-1. Rough Fish; Taking by Spear Gun, Spear, or Bow and Arrow from Public Fresh Waters Authorized**

Sec. 1. It shall be lawful to take rough fish with a spear gun and spear or bow and arrow in the public waters of the State of Texas at any time. Rough fish shall be defined as carp, buffalo, gasper gou, gar fish, and Rio Grande perch. A spear gun as used in this Act shall be defined as any type of device used for propelling a spear underwater as a means of taking fish.

Sec. 2. It shall be unlawful to have in possession any fish other than carp, buffalo, gasper gou, gar fish, and Rio Grande perch while using a spear gun and spear or bow and arrow for taking such fish.

[Acts 1957, 55th Leg., p. 211, ch. 98.]

**Art. 4050d. Consent to Federal Statute Relating to Fish Restoration and Management**

The State of Texas hereby assents to the provisions of the Act of Congress entitled "An Act

to provide that the United States shall aid the States in fish restoration and management projects," approved August 9, 1950 (Public Law 681, 81st Congress),<sup>1</sup> and the Game, Fish and Oyster Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said Act of Congress, in compliance with said Act and rules and regulations promulgated by the Secretary of the Interior thereunder.

[Acts 1951, 52nd Leg., p. 90, ch. 57, § 1.]

<sup>1</sup> 16 U.S.C.A. § 777 et seq.

**Art. 4050e. Commercial Fisheries Research and Development**

The State of Texas hereby assents to the provisions of the Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (codified in Title 16, Sections 779-779f, U.S.C.A.) and approved May 20, 1964, and the Parks and Wildlife Department is hereby authorized, empowered and directed to perform such acts as said Department may deem necessary to the research and development of commercial fisheries, as provided for in the said Act of Congress, in compliance with said Act and rules and regulations promulgated by the Secretary of Interior thereunder; provided further that any funds received from the Federal Government for research and development of commercial fisheries, as well as any funds appropriated by the State of Texas for research and development of commercial fisheries, shall be placed in a Game and Fish Fund No. 9 in the treasury of the State of Texas.

[Acts 1965, 59th Leg., p. 473, ch. 238, § 1.]

**Art. 4050f. Sale of Shellfish Taken from Polluted Areas**

**Definitions**

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

(a) "shellfish" means oysters, clams, and mussels, either fresh or frozen, and either shucked or in the shell;

(b) "polluted area" means an area which is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken therefrom are unfit for human consumption;

(c) "Commissioner" means the Commissioner of Health of the State of Texas;

(d) "person" includes individual, partnership, corporation, and association.

**Declaration of Polluted Areas; Closing Waters; Maps of Polluted Areas**

Sec. 2. (a) The Commissioner shall declare any area within the jurisdiction of this State to be polluted if he finds that it is a polluted area.

(b) The Commissioner shall close to the taking of shellfish for a period he deems advisable any waters to which shellfish from polluted areas may have been transferred.

(c) The Commissioner shall establish by order or orders the areas which he declares to be polluted and shall modify or revoke the orders in accordance with the results of sanitary and bacteriological surveys conducted by the State Health Department. The Commissioner shall file the orders in the office of the State Health Department and shall furnish copies of the orders describing polluted areas to any interested person without charge.

(d) The Commissioner shall cause polluted areas to be conspicuously outlined upon maps, which he shall furnish without charge to any interested person. The failure of any person or persons to avail themselves of this information shall not relieve them from a violation of this Act.

**Rules and Regulations; Enforcement of Act**

Sec. 3. (a) The Commissioner, with the approval of the State Board of Health, shall promulgate rules and regulations establishing specifications for plant facilities and for the harvesting, transporting, storing, handling and packaging of shellfish. The Commissioner shall file the rules and regulations in the office of the Secretary of State. The rules and regulations are effective three months from the date of their promulgation. The Commissioner shall furnish without charge printed copies of the specifications to any interested person upon request.

(b) The Commissioner may promulgate reasonable and necessary regulations, not inconsistent with any provision of this Act, for the efficient enforcement of this Act. The violation of a regulation promulgated under this Act is a violation of this Act.

**Inspection of Shellfish Plants; Reinspection**

Sec. 4. (a) The Commissioner, or his duly authorized agent, shall inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the rules and regulations promulgated under this Act, the Commissioner shall issue a certificate attesting to the compliance.

(b) The Commissioner, or his duly authorized agent, may cause a reinspection to be made at any time and shall revoke the certificate upon refusal of the operator to permit an inspection or free access at all reasonable hours, or upon a finding that the plant is not being operated in compliance with the rules and regulations promulgated under this Act.

**Taking Shellfish from Polluted Areas; Purification of Shellfish; Transplanting Shellfish**

Sec. 5. It shall be unlawful for any person to take, to sell, offer or hold for sale any shellfish from an area declared by the Commissioner to be polluted, without complying with all rules and regulations promulgated by the Com-

missioner to insure that the shellfish have been purified. The intent of this Section is not to prohibit the transplanting of shellfish from polluted waters, provided, however, that permission for the transplanting is first obtained from the Parks and Wildlife Department and is supervised by that Department. The Parks and Wildlife Department shall furnish a copy of the transplant permit to the Commissioner prior to the commencement of transplanting activity. The Commissioner may also allow purification of shellfish taken from polluted areas by artificial means, subject to the rules and regulations of the Commissioner and subject to supervision deemed necessary by the Commissioner in the interest of public health.

**Sale of Shell Stock or Shucked Shellfish;  
Handling and Packaging**

Sec. 6. It shall be unlawful for any person to sell, offer or hold for sale any shell stock or shucked shellfish which has not been handled and packaged in accordance with specifications fixed by the Commissioner under this Act.

**Sale of Shellfish; Handling and Packaging**

Sec. 7. It shall be unlawful for any person to sell, offer or hold for sale any shellfish where the facilities for packaging and handling of such shellfish does not comply with specifications fixed by the Commissioner under this Act.

**Shellfish Plants; Certificates**

Sec. 8. It shall be unlawful for any person to operate a shellfish plant engaged in the handling and packaging of shellfish, either shucked or in the shell, without a valid certificate issued by the Commissioner for each such plant or place of business.

**Sale of Shellfish in Certified Containers**

Sec. 9. It shall be unlawful for any person to sell, offer or hold for sale any shellfish not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the then current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States Public Health Service. The provisions of this Section do not apply to the sale for on-premises consumption of shellfish removed from a certified container.

**Application of Act; Compliance with Regulations**

Sec. 10. The provisions of this Act are applicable to all plants hereafter constructed or altered upon its effective date. The Commissioner shall give any plant which is in operation at the time of promulgation of the rules and regulations of this Act a reasonable length of time within which to comply with the rules and regulations, but in no event longer than six months. The Commissioner may extend the length of time within which to comply with the rules beyond six months upon sufficient show-

ing that it will reasonably require additional time to complete compliance with the rules and regulations.

**Enforcement of Act**

Sec. 11. The commissioned enforcement officers of the Parks and Wildlife Department shall enforce the provisions of Section 5 of this Act and shall lend reasonable assistance as may be determined by the Executive Director of the Parks and Wildlife Department to the Commissioner or his designated representatives in carrying out other provisions of this Act. The Commissioner of the State Health Department and his duly authorized representatives shall enforce all other provisions of this Act.

**Violations; Punishment**

Sec. 12. A person who violates any of the provisions of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$200 nor more than \$500. Each day of violation is a separate offense.

**Condemnation, Seizure and Confiscation of Shellfish**

Sec. 13. Any shellfish which are held or offered for sale at retail or for human consumption, and which have not been handled and packaged in accordance with the specifications fixed by the Commissioner under this Act, or which are not in a certified container as provided in Section 9 of this Act, or which are otherwise found by the Commissioner to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the Commissioner or his authorized agents; and they shall be held, destroyed, or otherwise disposed of as directed by the Commissioner.

**Performance Bond**

Sec. 14. Should the Commissioner deem it reasonably necessary for the enforcement of this Act, he is empowered to require of each person holding a certificate as required by Section 8 of this Act to post and maintain with him a good and sufficient bond, with a corporate surety or two personal sureties approved by the Commissioner, or a cash deposit in a form acceptable to the Commissioner, conditioned that the certificate holder will faithfully comply with all legal requirements imposed by virtue of this Act, and that, failing such, the certificate holder or his surety will pay as forfeiture to the Commissioner a sum not to exceed One Thousand Dollars (\$1,000).

**Repealer**

Sec. 15. Articles 965 and 972, Penal Code of Texas, 1925, are repealed. Any and all other statutes both General and Special in conflict with any of the provisions of this Act are hereby repealed but to the extent of such conflict only.

[Acts 1965, 59th Leg., p. 1575, ch. 683.]

### CHAPTER THREE. MARL, SAND AND SHELL

#### Article

4051. Property of the State.  
 4052. Powers of Commissioner.  
 4053. Permit to Use Marl, etc.  
 4053a to 4053c. Transferred.  
 4053d. Sale of Marl, Gravel, Sand, etc.  
 4053e. Partial Invalidity.  
 4054. Use in Municipal Road Work.  
 4054a. Material for Protective Work Along Coast.  
 4054b. Removal of Sand and Deposits in Corpus Christi Bay.  
 4055. Condemnation of Land.  
 4056. License for Mussels, etc.  
 4056a. Lease of Part of Brazos Island.  
 4057 to 4075. Reserved.

#### Saved From Repeal

*Acts 1973, 63rd Leg., p. 413, ch. 185, enacting the Coastal Public Lands Management Act of 1973, provided, in part, in § 18: "It is specifically provided that this Act does not repeal Chapters 2 and 3, Title 67, Revised Civil Statutes of Texas, 1925, as amended \* \* \*". See article 5415e-1, § 18.*

#### Abolition of Office

*Acts 1929, 41st Leg., p. 265, ch. 118, § 1, abolished the office of the Game, Fish and Oyster Commissioner and created and vested in the Game, Fish and Oyster Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f.*

*Acts 1951, 52nd Leg., p. 850, ch. 476, § 1, abolished the office of the Game, Fish and Oyster Commission and created and vested in the Game and Fish Commission the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commission and the Game, Fish and Oyster Commissioner. See Penal Auxiliary Laws, art. 978f-3.*

*The Game and Fish Commission was reconstituted and the name was changed to the Parks and Wildlife Department by Acts 1963, 58th Leg., p. 104, ch. 58. See Penal Auxiliary Laws, art. 978f-3a.*

#### Art. 4051. Property of the State

All the islands, reefs, bars, lakes, and bays within the tidewater limits from the most interior point seaward co-extensive with the jurisdiction of this State, and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mudshell or gravel of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds within the jurisdiction and territory herein defined, are included within the provisions of this chapter, and are hereby placed under the

management, control and protection of the Commissioner. None of the marl, gravel, shells, mudshells or sand included herein shall be purchased, taken away or disturbed, except as provided herein, nor shall any oyster beds or fish hatcheries within the territory included herein be disturbed except as herein provided. [Acts 1925, S.B. 84.]

#### Art. 4052. Powers of Commissioner

The Commissioner is hereby invested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying away or disturbing of all marl, sand or gravel of commercial value, and all gravel and shells or mudshell and oyster beds and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions as may be provided herein. [Acts 1925, S.B. 84.]

#### Art. 4053. Permit to Use Marl, etc.

##### Application; Terms and Conditions of Permit

Sec. 1. Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provisions of this Chapter, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou included in this Chapter, shall first make written application therefor to the Parks and Wildlife Commission, designating the limits of the territory in which such person desires to operate. If the Parks and Wildlife Commission finds that the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto or that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation, or change or otherwise injuriously affect any current that would affect navigation, it may issue a permit to such person after such applicant shall have complied with all requirements prescribed by said Parks and Wildlife Commission. The permit shall authorize the applicant to take, carry away or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions of the permit. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any of such products from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek, or bayou included in this Chapter.

Consideration of Injurious Effects and Industrial Requirements

Sec. 2. In determining whether or not such permit should be issued, the Parks and Wildlife Commission shall take into consideration any injurious effect which might occur to any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto, as well as the requirements of industry for such marl, sand, gravel, shells or mudshell and the relative value thereof to the State of Texas for commercial use.

Denial of Application for Permit; Findings of Fact

Sec. 3. In any order of the Commission issued denying an application for a permit, the Commission shall set forth full and complete findings of fact pointing out in detail the basis of its action.

Removal and Replanting of Oysters and Oyster Beds

Sec. 4. In carrying out its duties under the provisions of this Act, the Parks and Wildlife Commission shall be authorized, after due notice and hearing, to remove oysters or oyster beds and replant the same on other natural or artificially constructed reefs; provided, that before any action is taken pursuant to this Section, there shall be a finding by the Commission that such removal and replanting will be of benefit to the growth and propagation or betterment of oysters or oyster beds or fishing conditions and provided further that any such removal and replanting shall be done at the expense of the applicant for permit and not the State of Texas.

Rights of State Oil and Gas Lessees

Sec. 5. Nothing in this Chapter shall be construed to require any lessee of an oil and gas lease, which has heretofore or may hereafter be executed by the State, to obtain a permit from the Parks and Wildlife Commission to exercise the rights granted said lessee under said lease and the provisions of the applicable laws of the State of Texas.

[Acts 1925, S.B. 84; Acts 1963, 58th Leg., p. 674, ch. 248, § 1.]

Arts. 4053a to 4053c. Transferred

The text of these articles, derived from Acts 1923, 38th Leg., 2nd C.S., p. 11, ch. 6, as amended by Acts 1925, 39th Leg., p. 231, ch. 74, §§ 1 to 3, was transferred to article 4055.

Art. 4053d. Sale of Marl, Gravel, Sand, etc.

The Game, Fish and Oyster Commissioner by and with the approval of the Governor, may sell the marl, gravel, sand, shell or mudshell included within this Act, upon such terms and conditions as he may deem proper, but for not less than four (4¢) cents per ton, and payment therefor shall be made to said Commissioner. The proceeds rising from such sale shall be transmitted to the State Treasurer and be credited to a special fund hereby created to be known as the sand, gravel and shell fund of the State, and may be expended by the said Commissioner in the enforcement of the provisions of the sand, shell and gravel laws and in

the establishment and maintenance of fish hatcheries, when provided by legislative appropriation, and in the payment of refunds provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature,<sup>1</sup> to counties, cities or towns or any political subdivision of a county, city or town, as provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature. And also providing that the authorization of refunds on sand, gravel and shell shall be extended to include refunds to the State Highway Commission of money paid the State through the Game, Fish and Oyster Commission for sand, gravel and shell used by the State Highway Commission on public roads upon application for such refunds in the manner prescribed for cities and counties. Provided further that not less than seventy-five per cent of the proceeds derived therefrom, after refunds above referred to have been cared for, shall go for the establishment and maintenance of fish hatcheries; and the sand, gravel, and shell fund is hereby appropriated for the purpose of carrying out the provisions of this Act. Said hatcheries to be established from time to time in the State of Texas by the Fish, Game and Oyster Commission, when in their judgment a suitable location is secured and arrangements therefor have been completed.

[Acts 1925, 39th Leg., ch. 183, p. 452, § 1.]

<sup>1</sup> See, now, art. 4054.

Art. 4053e. Partial Invalidity

If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections, save the one that may be declared unconstitutional, shall continue to be in full force and effect, and all laws in conflict are hereby repealed.

[Acts 1925, 39th Leg., ch. 183, p. 453, § 2.]

Art. 4054. Use in Municipal Road Work

If any county, or subdivision of a county, city or town should desire any marl, gravel, sand, shell or mudshell included in this chapter for use in the building of any road or street, which work is done by said county, or any subdivision of a county, city or town, such municipality may be granted a permit without charge and shall have the right to take, carry away or operate in any waters or upon any islands, reefs or bars included herein; such municipality to do the work under its own supervision, but shall first obtain from the Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such municipality shall be subject to the same rules, regulations and limitations and discretion of the Commissioner as are other applicants and permits. When such building of roads or taking of such products is to be done by contract, then the said municipality may obtain a refund from the Commissioner of the tax levied and collected on said products as fixed by the Commissioner at the time of the taking thereof, by warrant drawn by the Comptroller

upon itemized account sworn to by the proper officer representing such municipality and approved by the Commissioner, and under such other rules and regulations as may be prescribed by the Commissioner.

[Acts 1925, S.B. 84.]

#### Art. 4054a. Material for Protective Work Along Coast

If any county, city or town authorized by Title 118 of the Revised Civil Statutes of 1925<sup>1</sup> to construct, extend, protect, strengthen, maintain, keep in repair and otherwise improve any seawall or breakwater, levee, dike, floodway and drainway, shall desire any marl, gravel, sand, shell or mudshell, included in this Chapter, for use in the building, constructing, extending, protecting, strengthening, maintaining, keeping in repair and otherwise improving any such seawall, or breakwater, levee, dike, floodway and drainway, such municipality shall be granted a permit without charge, and shall have the right, without payment therefor by such county, city or town to the Game, Fish and Oyster Commissioner, or to the State of Texas, to appropriate, dredge, take and carry away any such marl, gravel, sand, shell or mudshell from any of the waters, reefs, or bars included herein; provided that such permit shall be granted and such marl, gravel, sand, shell or mudshell shall be taken under such rules and regulations as the Commissioner may make and establish. Provided, further, that none of the benefits accruing under and by virtue of this Act shall inure to any person, firm or corporation holding a contract at the present time where marl, gravel, shell or mudshell shall be used as herein provided.

[Acts 1927, 40th Leg., p. 265, ch. 186, § 1.]

<sup>1</sup> Article 6830 et seq.

#### Art. 4054b. Removal of Sand and Deposits in Corpus Christi Bay

That there may be taken and appropriated from beneath the waters of Corpus Christi Bay and Nueces Bay, sand and other deposits having on<sup>1</sup> commercial value for filling and raising the grade of the salt flats in the northern portion of the City of Corpus Christi and the lowlands lying north of the north boundary line of the City of Corpus Christi, in Nueces County, Texas, and South of the south boundary line of the town of Portland in San Patricio County, Texas, without making payment therefor to the Game, Fish and Oyster Commissioner or to the State of Texas.

[Acts 1929, 41st Leg., p. 692, ch. 311, § 1.]

<sup>1</sup> Probably should read "no".

#### Art. 4055. Condemnation of Land

Sec. 1. That where the State of Texas, through the Game, Fish and Oyster Commissioner, has issued a permit to excavate and take from any island, reef, bar, lake, river, creek, bayou or bay of this State [,] marl, mudshell, oyster shell, sand and gravel, the State, at the request of the permit holder, shall

have the right and power to enter upon and condemn and appropriate the lands, right of ways, easements and property of any person or corporation for the purpose of erecting dredges and necessary equipment and for the purpose of laying and maintaining the railway spurs to the nearest railroad, and for the purpose of operating and maintaining necessary roads and passageways to said place of operations, including all such lands, right of ways, easements and property aforesaid for the purpose of establishing and maintaining landing places and providing moorings for barges and dredges and all equipments as may be determined by said permit holder necessary in carrying on said business, provided that such right of way should not invade improvements such as buildings or orchards; and provided, further, the manner and method of such condemnation and assessment and payment of damages therefor shall be the same as provided for by law in the case of railroads.

Sec. 2. Condemnation suits brought under this Chapter shall be brought in the name of the State by the county attorney of the county in which the property or a part thereof affected is situated and the county attorney shall receive a fee of \$10.00 for his services upon the institution of such proceedings, the same to be taxed and collected as a part of the cost in such suit. All costs in such proceedings shall be paid either by the permit holder, at whose instance such proceedings are had, or by the person against whom such proceedings are had, to be determined as in case of railroad condemnation proceedings, and all damages and pay for property awarded in such proceedings shall be paid by the permit holder and in no event shall the State be liable for any cost, damages or any sum whatsoever with respect to such proceedings.

Sec. 3. The importance of this legislation to the people of this State on account of scarcity of available sand, gravel and shell to be used in building and highway construction in Texas, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days in each House be suspended, and that this Act shall take effect and be in force from and after its passage and said rule is hereby suspended, and it is so enacted.

[Acts 1925, S.B. 84.]

#### Art. 4056. License for Mussels, etc.

It shall be unlawful for any person, firm or corporation to take from the public waters of the State for sale any mussels, clams, or naiad or shells thereof without first obtaining a license from the Commissioner to do so. Said license shall expire one year from the date of issuance, and shall be in such form as prescribed by the Commissioner, but shall state the water in which the licensee may operate. The applicant shall pay to the Commissioner, as a license fee, the sum of ten dollars and in addi-

tion thereto the sum of twenty-five dollars for permission to use a dredge.

[Acts 1925, S.B. 84.]

#### Art. 4056a. Lease of Part of Brazos Island

The Game, Fish and Oyster Commissioner is hereby authorized to lease the South 216.4 acres more or less of Brazos Island for the sole purpose of erecting and maintaining hunting, fishing and bathing resorts thereon. Leases of such lands shall, at the discretion of the Commissioner, run for any term of years not more than ten, at a fixed annual rental of not less than ten cents nor more than 50 cents per acre, at the discretion of the Commissioner, for each acre of land so leased, and before entering into any such lease the Commissioner in his discretion, may require such survey of the leased premises to be made at the expense of the applicant therefor, as may be necessary to determine the exact acreage of the lease. Lessees shall have, during the terms of their respective leases, the exclusive right to the use, occupation and enjoyment of such leased premises during the term and for the purposes of such lease only, but such use shall not be inconsistent with any other use of such leased premises as shall have been or may be granted by law or authority of law. All leases shall provide that the annual rentals therefor shall be paid to the Commissioner, annually in advance; and failure to pay any installment of annual rental therefor, when due, shall, at the option of the Commissioner, forfeit such lease. Lessees, under the terms of this Article shall have the right to remove from the leased premises, within one month after the termination of the lease, any and all improvements erected thereon by them. All rentals collected by the Commissioner under the provisions of this Act shall be placed in the State Treasury to the credit of the "Fish and Oyster Fund" as provided by Article 4030 of this Title.

[Acts 1929, 41st Leg., 1st C.S., p. 240, ch. 99, § 1.]

#### Arts. 4057 to 4075. Reserved

Articles 4057 to 4075, inclusive, have been omitted in the Acts of 1925. For additional legislation on subject "Game, Fish and Oysters," see Penal Auxiliary Laws, art. 871 et seq.

### CHAPTER FOUR. GULF STATES MARINE FISHERIES

#### Art. 4075a. Gulf States Marine Fisheries Compact

##### Governor Authorized to Execute Compact

Sec. 1. The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of Texas with any one or more of the States of Florida, Alabama, Mississippi, and Louisiana, and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

#### GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

##### ARTICLE I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

##### ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

##### ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

##### ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf



Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against over-fishing, waste, depletion or any abuse whatsoever, and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto the stocking of the waters of such States with fish and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

## ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

## ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

## ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research

agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

## ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

## ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

## ARTICLE X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

## ARTICLE XI

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

## ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriations as set forth below shall be made availa-

ble yearly until modified as hereinafter provided:

Florida	\$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	\$13,000.00

The proration and total cost per annum of Thirteen Thousand (\$13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

#### ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

##### Members of Commission

Sec. 2. In pursuance of Article III of said compact there shall be three members (hereinafter called commissioners) of the Gulf States Marine Commission (hereinafter called commission) from the State of Texas. The first commissioner from the State of Texas shall be the Executive Secretary of the Game, Fish and Oyster Commission of the State of Texas ex-officio, and the term of any such ex-officio commissioner shall terminate at the time the said commissioner ceases to hold said office of Executive Secretary of the Game, Fish and Oyster Commission, and his successor as a member of this commission shall be his successor as Executive Secretary of the Game, Fish and Oyster Commission. The second commissioner from the State of Texas shall be a legislator appointed jointly by the Lieutenant Governor and Speaker of the House of Representatives, and the term of any such ex-officio commissioner shall terminate at the time he ceases to hold said legislative office; and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner, who shall have a knowledge of the marine fisheries problems. The term of said commissioner shall be for a period of three years, and in addition he shall serve until his successor shall be appointed and qualified. Vacancies occurring in the of-

office of such commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The Executive Secretary of the Game, Fish and Oyster Commission, as ex-officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or otherwise proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said Article II.

##### Powers of Commissioners; Duties of State Officers, Bureaus, Etc.

Sec. 3. There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Texas are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Texas to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the State government or administration of the State of Texas are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

##### Powers Regarded as Supplemental

Sec. 4. Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Texas, or by the terms of said compact.

##### Accounts and Reports

Sec. 5. The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Texas on or before the tenth day of February in each year, setting forth in detail the transactions conducted by it during the twelve months preceding January 1st of that year, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the Statutes of the State of Texas which may be necessary to carry out the intent and purposes of the compact between the signatory States.

The Auditor of the State of Texas is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, and such other items referring to its financial standing, as such Auditor may deem proper, and to report the results of such examination to the Governor of each State.

Appropriation

Sec. 6. The sum of Two Thousand Five Hundred (\$2,500.00) Dollars or so much thereof as may be necessary, is hereby appropriated out of the Special Game and Fish Fund for the expenses of the Commission created by the compact authorized by this Act. The monies hereby appropriated shall be out of said Special Game and Fish Fund by warrant drawn by the Comptroller on account sworn to by the Chairman of the Gulf States Marine Fisheries Commission and approved by the Executive Secretary of the Game, Fish and Oyster Commission of the State of Texas.

Severability of Provisions

Sec. 7. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the Act, which can be given effect without the invalid provision or application; and to this end the provisions of this Act are declared to be severable.

[Acts 1949, 51st Leg., p. 1087, ch. 554.]

CHAPTER FIVE. COASTAL WATERS

Article

- 4075b. Texas Shrimp Conservation Act.
- 4075b-1. Use of Seines to Take Shrimp Outside State Waters for Personal Use; Restrictions; Limit; Penalty.
- 4075c. Texas Territorial Waters Act.

Art. 4075b. Texas Shrimp Conservation Act

Short Title; Public Policy

Sec. 1. This Act shall be known as the "Texas Shrimp Conservation Act" and it is hereby declared by the Legislature of the State of Texas to be the public policy of this State that the shrimp resources of the State of Texas be conserved and protected from depletion and waste in order that the people of Texas and their posterity may enjoy the most reasonable and equitable privileges in the ownership and taking of such shrimp resources, and that the shrimp industry of Texas be protected from unlawful encroachment and be promoted and fostered consistent with the general good of the people of this State and to those ends, and in the interest of achieving fair, impartial, and uniform law enforcement, it is further declared by the Legislature of Texas to be the public policy of this State that any and all laws, acts, bills, rules, regulations, proclamations or orders relating to shrimp or the shrimp industry shall be carried out under this Act, any other provision of the law to the contrary notwithstanding.

Research and Studies; Statistical Information; Reports; Findings

Sec. 2. It shall be the duty of the Game and Fish Commission to conduct, or cause to be conducted through any other agency that said Commission may designate, continuous research, investigations and studies of the supply, economic value, environment and breeding habits of the different species of shrimp and other factors affecting their increase or decrease, particularly with reference to the use of trawls, nets or other devices for the taking of shrimp, and with reference to industrial and other pollution of waters naturally frequented by shrimp, and to any and all other factors that enter into a reduction or increase in the supply of the shrimp resources of Texas. The Commission is hereby directed to gather statistical information on the marketing and processing, and on the harvesting, and catching, of shrimp landed at points in the State of Texas. The information shall set forth the quantity, in number of pounds, of shrimp landed at points in Texas, the waters from which taken, and the names of the various species. The Game and Fish Commission shall prepare forms for reports which shall be furnished to those persons licensed under this Act to unload shrimp within Texas who shall make monthly reports to the Commission on said forms, not later than the tenth day of each month. Pursuant to and based upon such studies and reports, said Commission shall enter its findings of fact with respect thereto in the permanent records of said Commission, which records shall be kept current and up-to-date as nearly as practicable and such findings of facts shall be published in the form of a report and presented to the Governor and each Member of the Legislature prior to each Regular Session of the Legislature.

Definitions

Sec. 3. The following words, terms, and phrases used in this Act are hereby defined as follows:

(a) "Coastal Waters," as that term is used herein, means all of the salt waters of the State of Texas, including that portion of the Gulf of Mexico within the jurisdiction of this State, and for the purposes of this Act, said coastal waters of Texas are divided into two (2) classes, namely, the "Inside Waters" and the "Outside Waters." The term "Outside Waters," as that term is used herein, shall mean the salt waters of this State contiguous to, and seaward from, the shore line of the State of Texas along the Gulf of Mexico as such shore line is projected and extended in a continuous and unbroken line, following the contours and meanders of such shore line, across bays, inlets, passes, rivers, streams and other bodies of water; the same being that portion of the Gulf of Mexico extending from such shore line seaward and within the jurisdiction of the State of Texas. The term "Inside Waters,"

as that term is used herein, shall mean all bays, inlets, outlets, passes, rivers, streams and other bodies of water landward from such shore line and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which salt-water shrimp are found or into which salt-water shrimp migrate.

(b) "Major Bays," as used herein, means the deeper, major bay areas of the inside waters, and for the purposes of this Act shall include Sabine Lake, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay including Keller's Bay and East Matagorda Bay, Tres Palacios Bay, Espiritu Santo Bay, Lavaca Bay from the present causeway seaward, San Antonio Bay, Ayres Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous and inlets.

(c) "Commission," as used herein, means the Game and Fish Commission of the State of Texas.

(d) "Person," as used herein, means any person, firm, partnership, company, corporation, co-operative, association, or any legal entity whatsoever.

(e) "Possess" in its different tenses, as used herein, includes the act of having in possession or control, keeping, detaining, restraining or holding, as owner, or under a fishing ley, or as agent, bailee, or custodian of another; and whenever possession, sale, purchase, unloading or other handling of shrimp is prohibited, reference is made and intended, and shall apply, equally to such shrimp coming from without the State as to that taken within the State unless otherwise specifically provided.

(f) A "Commercial Gulf Shrimp Boat," as that term is used herein, is any boat or vessel which is required to be numbered or registered by and under the laws of the United States of America or of the State of Texas, and which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp and other edible aquatic products from the outside waters of the State of Texas for pay, or for the purpose of sale, barter or exchange, or which is used for the purpose of taking or catching, shrimp and other edible aquatic products from salt waters outside of the State of Texas for pay or for the purpose of sale, barter or exchange, and unloading same at a port or other point in Texas without having been previously unloaded in some other state or foreign country.

(g) A "Commercial Bay Shrimp Boat," as that term is used herein, is any boat or vessel which is required to be numbered or registered by and under the laws of the

United States of America or the State of Texas, and which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp and other edible aquatic products from the inside waters of the State of Texas for pay, or for the purpose of sale, barter or exchange.

(h) A "Commercial Bait Shrimp Boat," as used herein, means any boat or vessel which is required to be numbered or registered by and under the laws of the United States of America or of the State of Texas, and which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp for use as bait and other edible aquatic products from the inside waters of Texas for pay, or for the purpose of sale, barter or exchange.

(i) A "Shrimp House Operator," as used herein, means any person other than one who has purchased a license as a "Wholesale Fish Dealer" as that term is defined by Section 1(b) of Chapter 29, Forty-third Legislature of Texas, First Called Session, 1933,<sup>1</sup> who operates a shrimp house, plant or other establishment for compensation or profit for the purpose of unloading and handling from commercial gulf shrimp boats or commercial bay shrimp boats, fresh shrimp and other edible aquatic products caught or taken from the coastal waters of this State, or from salt waters outside of this State and brought into this State without having been previously unloaded in some other state or foreign country.

(j) A "Bait-Shrimp Dealer," as used herein, is any person other than one who has purchased a license as a "Wholesale Fish Dealer," as that term is defined by Section 1(b) of Chapter 29, Forty-third Legislature of Texas, First Called Session, 1933, who operates an established place of business in any coastal county of this State for compensation or profit for the purpose of handling shrimp caught or taken for use as bait from the inside waters of this State.

(k) An "Individual Bait-Shrimp Trawl," as used herein means any trawl, net or rig used for the purpose of taking or catching, or attempting to take or catch, shrimp for one's own personal use.

(l) The term "at any time," as used herein, means at any time of year, including both daytime and nighttime, and on any occasion.

<sup>1</sup> Penal Auxiliary Laws, art. 934a.

#### Limits for Inside and Outside Waters

Sec. 4. (a) It shall be unlawful for any person (except for catching bait shrimp or except as otherwise herein specifically provided) to take or catch, or attempt to take or catch, at any time, in either the inside waters or in the outside waters of this State, any amount of shrimp which shall average in count of individ-

ual specimens more than sixty-five (65) headless fresh shrimp to the pound, or which shall average in count of individual specimens more than thirty-nine (39) heads-on fresh shrimp to the pound, or for any person (except for catching bait shrimp or except as otherwise specifically provided herein), at any time, to possess in the State of Texas, or have on board any boat or vessel within the coastal waters of this State, or to buy, sell, unload, transport or handle in any way, in the State of Texas, any amount of headless fresh shrimp which shall average in count of individual specimens more than sixty-five (65) headless fresh shrimp to the pound, or which shall average in count of individual specimens more than thirty-nine (39) heads-on fresh shrimp to the pound, regardless of whether or not such small fresh shrimp of said count shall have been caught or taken in the coastal waters of the State of Texas or in waters outside of the State of Texas.

(b) The "count" of shrimp, as provided for herein, shall be taken in the presence of any person possessing said shrimp either as owner, employee, agent, bailee, or other custodian, by an officer, agent, deputy or warden of the Game and Fish Commission who shall select from the entire quantity of shrimp being sampled a minimum of not less than three (3) representative samples for each one thousand (1,000) pounds, or fraction thereof, of either headless or heads-on shrimp, but in any event not less than three (3) samples for the entire quantity of shrimp being sampled; each sample shall consist of a sufficient number of specimens to weigh out five (5) pounds after having been allowed to drain for three (3) minutes, or more; after said sample shall have been weighed and determined to weigh five (5) pounds, the number of specimens in said five (5) pound sample shall be counted, and the count thus obtained shall then be divided by five (5) in order to ascertain the count per pound of such five (5) pound sample; after counts shall have been thus made of all samples taken of such entire quantity of shrimp, the average count per pound of each sample taken shall be totaled and the final average count per pound of the entire quantity of shrimp being sampled shall be determined by dividing that total by the number of samples counted; and such average count per pound so determined shall constitute prima facie evidence of the average count per pound of said shrimp in the entire cargo or quantity of shrimp sampled. Headless and heads-on shrimp shall always be sampled, weighed and counted separately.

(c) In the event shrimp, which when caught and landed were of legal size according to the count as herein provided, are thereafter graded for size for the purpose of packaging, processing or other lawful purpose, and the smaller shrimp making up the average count of such entire lot as herein provided are graded out into a separate lot or lots, and such smaller shrimp thus segregated from such entire lot

are above the average count as herein provided, the possession, purchase, sale, unloading, transportation or handling of such particular smaller graded shrimp shall not be unlawful.

Commercial Bay Shrimp Boat License; Procedures  
and Regulations

Sec. 5. (a) It shall be unlawful for any commercial bay shrimp boat to be used for the purpose of taking or catching, or assisting in taking or catching, shrimp and other edible aquatic products from the inside waters of Texas, without the owner thereof having first procured a license, to be known as a Commercial Bay Shrimp Boat License, from the Commission privileging such boat to be so used within the inside waters of Texas. The fee for a Commercial Bay Shrimp Boat License shall be Forty Dollars (\$40) and such License shall be issued for a period of one (1) year and shall expire March 1st of the year following the date of issuance, and shall be secured from and issued by the Commission only during the months of January and February of each year; the License shall include the right to use and operate within the inside waters of this State all shrimp trawls and fishing gear, except fish seines or nets, with which said boat is equipped, the use of which is not otherwise prohibited by law; and said boat shall not be required to also have a "Commercial Fishing Boat License," as provided by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949,<sup>1</sup> or other Statutes of this State; but the captain and each paid member of the crew of said boat shall be required to have a Commercial Fisherman's License issued by the Commission, and said boat shall be required to be licensed as a commercial gulf shrimp boat in order to operate within the outside waters of this State; the Commercial Bay Shrimp Boat License shall be a metal or plastic sign or emblem, of prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, of a distinguishable character, color and design different from the emblem required of a commercial bait-shrimp boat or of a commercial gulf shrimp boat, issued by the Commission, and shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat as specified by said Commission and on each side of said boat, evidencing the payment of such boat License.

(b) Such Commercial Bay Shrimp Boat License shall be issued by the Commission only to a person who, at the time he applies for such license, shall make a sworn affidavit that he will maintain adequate facilities to conduct such business and that he intends to derive the major portion of his livelihood from commercial shrimp fishery.

(c) It shall be unlawful for any commercial bait-shrimp boat to be used for the purpose of taking or catching, or assisting in taking or

catching, shrimp for use as bait only and other edible aquatic products from the inside waters of Texas, without the owner thereof having first procured a license, to be known as a Commercial Bait-Shrimp Boat License, from the Commission privileging such boat to be so used within the inside waters of Texas. The fee for a Commercial Bait-Shrimp Boat License shall be Forty Dollars (\$40) and such License shall expire August 31st following the date of issuance; the License shall include the right to use and operate within the inside waters of this State all shrimp trawls and fishing gear, except fish seines or nets, with which said boat is equipped, the use of which is not otherwise prohibited by law; and said boat shall not be required to also have a "Commercial Fishing Boat License" as provided by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949, or other Statutes of this State; but the captain and each paid member of the crew of said boat shall be required to have a Commercial Fisherman's License issued by the Commission, and said boat shall be required to be licensed as a commercial gulf shrimp boat in order to operate within the outside waters of this State. The Commercial Bait-Shrimp Boat License shall be a metal or plastic sign or emblem, of prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, of a distinguishable character, color and design different from the emblem of a commercial bay shrimp boat or of a commercial gulf shrimp boat, issued by the Commission, and shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat as specified by said Commission and on each side of said boat evidencing the payment of such boat License.

(d) Such License for a commercial bay shrimp boat or for a commercial bait-shrimp boat shall be issued by the Commission only upon presentation to the Commission by the boat owner of the boat's United States Bureau of Customs official document or the Texas certificate of number for a motor boat, and the name of the boat and the number appearing on said official document or Texas certificate of number shall be placed by the Commission on the certificate of the license issued by the Commission. Such License shall not be transferable except that it may be transferred, upon application by the owner to the Commission, from a boat that has been destroyed or lost to a boat acquired by the owner thereof as a replacement. Not more than one Commercial Bay Shrimp Boat License and not more than one Commercial Bait-Shrimp Boat License shall be issued per licensing year for each boat.

(e) A Commercial Bay Shrimp Boat License may be issued by the Commission in some month other than January or February, in the event, and only in the event, the applicant therefor has acquired, subsequent to the last day of February of the year for which license

is sought, title to a shrimp boat, either by purchase or by having a new boat constructed, and makes affidavit of such fact and also makes further affidavit that prior to said last day of February applicant had not entered into an agreement to acquire such boat.

<sup>1</sup> Penal Auxillary Laws, art. 934b-2.

#### Taking of Shrimp in Inside Waters

Sec. 6. (a) It shall be unlawful for any person, at any time, to take or catch, or to attempt to take or catch, shrimp of any size or species within the inside waters of the State of Texas, except as hereinafter specifically provided.

(b) It shall be unlawful for any person, at any time, to take or catch, or to attempt to take or catch, shrimp of any size or species within the natural or man-made passes leading from the inside waters to the outside waters of this State.

(c) It shall be unlawful for any person (except for catching bait-shrimp as otherwise provided herein) to take or catch, or to attempt to take or catch, in the inside waters of this State, shrimp of any size or species, or to use or operate any net or trawl in the inside waters of this State for the purpose of taking or catching, or attempting to take or catch, shrimp, except during the period beginning thirty (30) minutes before sunrise and ending thirty (30) minutes after sunset.

(d) It shall be unlawful for any person, at any time, to head any shrimp aboard a boat or vessel within the inside waters of this State, or to dump or deposit any shrimp heads in the inside waters of this State except in artificial passes, canals or basins.

(e) It shall be unlawful for any person to have on board a boat in the inside waters of Texas for use on said inside waters more than one set of trawl doors (or other spreading device) and more than one set of try-net doors, except during the period from August 15th to December 15th, both dates inclusive.

(f) It shall be lawful for any bona fide licensed commercial bay shrimp boat operator to take or catch, or to attempt to take or catch, shrimp of lawful size of any species within the major bays, as herein defined, during the period from August 15th to December 15th of each year, both dates inclusive (said period being designated as the "open season" for any such commercial bay shrimp boat operators), provided, however:

1. During the open season for shrimping in the major bays of this State as herein provided, it shall be unlawful for any person to take or catch, or to attempt to take or catch, shrimp of any size or species in said major bays of this State with more than one (1) net, except a try net as hereinafter provided, or with a net of a size exceeding sixty-five (65) feet in width as measured along the corkline from board to board or between the extremes of any other spreading device.

2. It shall be unlawful for any person, at any time, to use, or to have in his possession, within the inside waters of this State, or on board any boat or vessel within such inside waters, any try net or test net exceeding twelve (12) feet in width as measured along the corkline from board to board; and it shall be unlawful for any person (except for catching bait-shrimp or except as otherwise herein provided) to take or catch, or attempt to take or catch, any shrimp within the inside waters of this State with, or to have in possession in the State of Texas, or on board any boat or vessel within the coastal waters of this State, for use in said inside waters, any trawl and bag (other than a try net or test net) of a mesh size such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said trawl or bag is less than eight and three-quarters ( $8\frac{3}{4}$ ) inches in length after said trawl or bag has been placed in use. Such measurement shall be made in the section of said trawl which is normally under tension when in use.

(g) It shall be lawful for any bona fide commercial bay shrimp boat operator to take or catch, or to attempt to take or catch, shrimp of any size or species during the period from May 15th to July 15th, both dates inclusive, within the major bays of the inside waters of this State; provided, however:

1. It shall be unlawful for any bona fide commercial bay shrimp boat operator during said period from May 15th to July 15th to take or catch more than three hundred (300) pounds of shrimp per boat per calendar day, or to have in his possession or on board any boat on the inside waters of this State, or to unload or attempt to unload at any point in the State of Texas, more than three hundred (300) pounds of shrimp. Such shrimp shall be in their natural state with heads attached.

2. It shall be unlawful for any bona fide commercial bay shrimp boat operator during said period from May 15th to July 15th to use in said major bays of the inside waters of this State for the purpose of taking or catching, or attempting to take or catch, shrimp more than one (1) net at a time (except for a try net), or to use any net exceeding twenty-five (25) feet in width as measured along the corkline from board to board or between the extremes of any other spreading device, or to use any net or bag of a mesh size such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said net or bag is less than six and one half ( $6\frac{1}{2}$ ) inches in length after such net or bag has been placed in use.

(h) It shall be unlawful for any bona fide licensed commercial bait-shrimp boat operator to

take or catch, or attempt to take or catch, within the inside waters of this State, shrimp of any size or species, for use as bait only; provided, however:

1. It shall be unlawful for any such commercial bait-shrimp boat operator to take or catch more than one hundred and fifty (150) pounds of shrimp per boat per calendar day, or to have in his possession or on board any boat, or to unload or attempt to unload at any point in Texas, more than one hundred and fifty (150) pounds of shrimp. Such shrimp shall be in their natural state with heads attached.

2. It shall be unlawful for any bona fide licensed commercial bait-shrimp boat to use in the inside waters of this State, at any time, for the purpose of taking or catching, or attempting to take or catch, shrimp for bait, more than one (1) net at a time (except that one try net not exceeding five (5) feet in width as measured along the corkline from board to board may be also used) or to use any net exceeding in width twenty-five (25) feet as measured along the corkline from board to board or between the extremes of any other spreading device, or to use any net or bag of a mesh size such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said net or bag is less than six and one half ( $6\frac{1}{2}$ ) inches in length after said net has been placed in use.

3. It shall be unlawful for any bona fide commercial bait-shrimp boat operator to take or catch, or attempt to take or catch, shrimp for use as bait between sunset and sunrise except during the period beginning December 16th of each year and ending August 14th of the following year, both dates inclusive. Provided, however, that bait shrimp may be taken at any time of the day or night in the waters of the Laguna Madre.

4. It shall be unlawful for any bona fide commercial bait-shrimp boat operator, at any time, to sell or unload any shrimp caught under the provisions of this Act to any person except a bona fide bait-shrimp dealer, as that term is herein defined, or except to a sports fisherman while operating a boat or vessel in the inside waters. It shall be unlawful for a duly licensed bait-shrimp boat operator to take more than one-hundred and fifty (150) pounds of bait shrimp each day, of which not more than fifty (50) per cent may be dead and fifty (50) per cent shall be kept in a live condition on board the vessel taking said bait shrimp.

Prior to the issuance of a bait-shrimp boat license, an inspection shall be made by authorized personnel of the Parks and Wildlife Department to insure that adequate facilities are present aboard the vessel to be licensed, and to

maintain fifty (50) per cent of the daily catch of bait shrimp alive. All frozen dead bait held under a bait-shrimp dealer's license shall be packaged and shall be labeled with block letters at least one (1) inch in height "Bait Shrimp".

Commercial Gulf Shrimp Boat License; Fee; Display;  
Taking of Shrimp in Outside Waters

Sec. 7. (a) It shall be unlawful for any commercial gulf shrimp boat to be used for the purpose of taking or catching, or assisting in taking or catching, shrimp and other edible aquatic products from the outside waters of Texas, or for any such boat which has on board fresh shrimp or other edible aquatic products caught or taken from the outside waters of this State, or from salt waters outside of this State without having been previously unloaded in some other state or foreign country, to unload, or to be permitted to unload, said shrimp and other edible aquatic products at any port or other point in Texas, without the owner thereof having first procured a license, to be known as a Commercial Gulf Shrimp Boat License, from the Commission privileging such boat to be so used or to so unload its cargo. The fee for a Commercial Gulf Shrimp Boat License shall be Fifty Dollars (\$50) and such license shall expire August 31st following the date of issuance, and said Commercial Gulf Shrimp Boat License shall include the right to use and operate all shrimp trawls and fishing gear, except fish seines or nets, with which said boat is equipped, the use of which is not otherwise prohibited by law, and said boat shall not be required to also have a "Commercial Fishing Boat License" as provided for by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949,<sup>1</sup> or other Statutes of this State, but the captain and each paid member of the crew of said boat shall be required to have a commercial fisherman's license issued by the Commission. A metal or plastic plate or emblem of a prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, issued by the Commission, shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat specified by the said Commission and on each side of said boat, evidencing the payment of such boat license.

(b) Such Commercial Gulf Shrimp Boat License shall be issued by the Commission only upon presentation to the Commission by the boat owner of the boat's United States Bureau of Customs official document or the Texas Certificate of number for a motor boat, and the name of the boat and the number appearing on said official document or Texas Certificate of number shall be placed by the Commission on the certificate of the Commercial Gulf Shrimp Boat License issued by the Commission. Such License shall not be transferable except that it may be transferred, upon application by the owner to the Commission, from a boat that has

been destroyed or lost to a boat acquired by the owner thereof as a replacement. Not more than one (1) Commercial Gulf Shrimp Boat License shall be issued per licensing year for each boat.

(c) It shall be unlawful for any person to take or catch, or attempt to take or catch, any shrimp, regardless of size or species, in any of the outside waters of the State of Texas from June 1st to July 15th, both dates inclusive, of each year; provided, however, that based upon sound biological data, the Game and Fish Commission of Texas may, and it is hereby empowered to, change the opening and closing dates of said forty-five-day period so as to provide for an earlier period beginning not to exceed fifteen (15) days prior to June 1st or for a later period ending not to exceed fifteen (15) days after July 15th, provided further that said closed season shall always be for a period of forty-five (45) days. It shall be unlawful for any person, at any time, to possess in the State of Texas, or to have on board any boat or vessel within the coastal waters of this State, or to buy, sell, unload, transport or handle in any way, in the State of Texas, any such shrimp caught in any of the outside waters of this State during such closed season for said outside waters. Provided, however, it shall be lawful during said forty-five-day closed season for any bona fide commercial gulf shrimp boat operator to take or catch white shrimp in the outside waters of this State not exceeding a depth of four (4) fathoms; provided, however, it shall be unlawful to use more than one (1) net at a time and such trawl shall not exceed twenty-five (25) feet in width as measured along the corkline, from board to board (or any other spreading device).

(d) It shall be unlawful for any person to take or catch, or attempt to take or catch, shrimp of any size or species, in the outside waters extending from the coast line of Texas up to and including seven (7) fathoms in depth during the period beginning thirty (30) minutes after sunset and ending thirty (30) minutes before sunrise.

(e) It shall be unlawful for any person to take or catch, or attempt to take or catch, shrimp in the outside waters extending from the coast line of Texas up to and including seven (7) fathoms in depth during the period beginning December 16 of each year and ending on February 1 of the following year, both dates inclusive.

(f) It shall be unlawful for any person at any time to catch or take any shrimp within the outside waters of this State with, or to have in possession in the State of Texas or on board any boat or vessel within the coastal waters of this State, any trawl for use in said outside waters, other than a try net or test net of a mesh size such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said trawl is less than eight and three quarters ( $8\frac{3}{4}$ ) inches in length after such trawl



has been placed in use. Such measurement shall be made in the section of said trawl which is normally under tension when in use. Any try net or test net used shall not exceed twelve (12) feet as measured from board to board, or between the extremes of any other spreading device.

(g) The foregoing Sections 4, 7(e) and 7(f) of this Act shall not apply to the taking or catching of seabobs; provided, however, it shall be unlawful for any commercial gulf shrimp boat operator at any time to take or catch, or attempt to take or catch, seabobs in the outside waters with more than one trawl at a time and such trawl shall not exceed twenty-five (25) feet in width as measured along the corkline from board to board (or any other spreading device), and the mesh size of said trawl shall be such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said trawl shall be not less than six and one half (6½) inches in length after such trawl has been placed in use. Provided, further, that it shall be unlawful for any person taking or catching seabobs under this provision to take or catch, or have on board a vessel, any other species of shrimp which shall exceed ten per cent (10%), in weight or numbers, of the entire catch.

<sup>1</sup> Penal Auxilliary Laws, art. 934b-2.

**Possession of Salt Water Shrimp after End of Season;  
Use of Nonconforming Trawls**

Sec. 8. (a) Salt-water shrimp in their fresh state, legally taken in either the inside waters or in the outside waters of this State during the open season thereof, may be had in possession for a period of five (5) days after the end of such open season, but not thereafter except by a bona fide licensed bait dealer or sports fisherman as otherwise provided herein.

(b) All legal trawls in use or on hand at the time of the final passage of this Act which do not conform to the specifications of this Act may nevertheless be used, subject to the other specifications of this Act, not later than May 1, A.D. 1964, and not thereafter, but whenever a trawl which was in use or on hand at the final passage of this Act is replaced it shall be replaced with a trawl conforming to all of the specifications of this Act.

**Shrimp House Operator's License; Fee**

Sec. 9. It shall be unlawful for any shrimp house operator to unload or handle from any commercial gulf shrimp boat or commercial bay shrimp boat fresh shrimp or other edible aquatic products caught or taken from the coastal waters of this State, or from salt waters outside of this State and brought into this State without having been previously unloaded in some other state or foreign country, without the owner thereof having first procured a license, to be known as a Shrimp House Operator's License, from the Commission privileging such shrimp house operator to so unload or handle such fresh shrimp. The fee for a

Shrimp House Operator's License shall be One Hundred and Fifty Dollars (\$150), and said license shall expire August 31 following the date of issuance.

**Bait-Shrimp Dealer's License; Fee;  
Sale of Fish Bait**

Sec. 10. (a) It shall be unlawful for any person to engage in the business of a bait-shrimp dealer, as that term is herein defined, without having first procured from the Commission a Bait-Shrimp Dealer's License for each bait stand or place of business maintained by such person. The fee for each such Bait-Shrimp Dealer's License shall be Forty Dollars (\$40) and said License shall expire August 31 following the date of issuance. The Commission shall issue such a Bait-Shrimp Dealer's License only after said Commission has determined as far as practicable that the applicant for such Bait-Shrimp Dealer's License is a bona fide bait-shrimp dealer as that term is now or hereafter defined by law, and no Bait-Shrimp Dealer's License shall be held by any person who also holds a Shrimp House Operator's License.

(b) Such Bait-Shrimp Dealer's License shall include the right to sell, purchase and handle minnows, fish and other forms of aquatic life for the purpose of sale or resale for fish bait purposes, within the coastal counties of this State. The license for a bait dealer as provided for by Acts of 1933, First Called Session, Forty-third Legislature, Chapter 29, Section 2, and as provided for by Acts of 1933, First Called Session, Forty-third Legislature, Chapter 29, Section 3, as last amended by Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 345, and Acts of 1945, Forty-ninth Legislature, Chapter 209,<sup>1</sup> shall continue in full force and effect as to all counties except the coastal counties of this State and as to any bait dealer in said coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, provided, that any grocery stores in said coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats shall not be required to hold a Bait-Shrimp Dealer's License.

<sup>1</sup> Penal Auxilliary Laws, art. 934a, §§ 2, 3.

**Use of Cast Nets, Dip Nets, Bait Traps or Minnow  
Seines; Individual Bait-Shrimp Trawl License;  
Fee**

Sec. 11. (a) It shall be lawful for any person to take or catch, or attempt to take or catch, in the coastal waters of this State, shrimp for use as bait, by the use of any "individual bait-shrimp trawl" as defined herein, a cast net, dip net, bait trap or minnow seine not larger than twenty (20) feet in length manually operated on foot only without the use of any mechanical means or devices.

(b) It shall be unlawful for any person to have in his possession or on board any boat or vessel in the coastal waters of this State any individual bait-shrimp trawl without the owner thereof having first procured a license, to be

known as an "Individual Bait-Shrimp Trawl License," from the Commission privileging such trawl to be used within the coastal waters of this State; and the fee for such License shall be Five Dollars (\$5) and said License shall expire on August 31 following the date of its issuance.

(c) It shall be unlawful for any person, at any time, to use, or to have within his possession or on board any boat or vessel in the coastal waters of this State any individual bait-shrimp trawl having a mesh size such that the distance between the two (2) most widely separated knots in any consecutive series of five (5) stretched meshes of said trawl is less than eight and three-quarters ( $8\frac{3}{4}$ ) inches in length after said trawl has been placed in use and the distance between the doors or boards or other spreading devices shall not exceed twenty (20) feet, with doors or boards not to exceed dimensions of fifteen (15) inches by thirty (30) inches each, or a total of four hundred and fifty (450) square inches each, and it shall be unlawful to have in possession or to use more than one (1) such individual bait-shrimp trawl per boat.

(d) It shall be unlawful for any person taking or catching, or attempting to take or catch, shrimp for his own use under the provisions of this Act by means of an individual bait-shrimp trawl to have within his possession or on board any boat or vessel within the coastal waters of this State more than two (2) quarts of shrimp per person, or more than four (4) quarts per boat to be used for bait purposes only; provided, however, any person may take or catch shrimp for his own personal use in an amount not to exceed one hundred (100) pounds of shrimp (in their natural state with heads attached) per day but only during the open season of the inside waters from August 15 to December 15 and of the outside waters of this State, each respectively, and an amount not to exceed fifteen (15) pounds of shrimp (in their natural state with heads attached) per day during the period May 15 to July 15, both dates inclusive, in the major bays of the inside waters only, by means of said individual bait-shrimp trawl or of said cast net, dip net, bait trap or minnow seine. Provided, further, that it shall be unlawful for any person to buy, sell, offer for sale or handle in any way for profit any shrimp so caught.

(e) It shall be lawful for any person to possess and use, until August 31, 1963, any duly tagged and licensed "sports bait-shrimp trawl" as defined, and meeting the size and dimensions as specified, in House Bill No. 12, Chapter 187, Acts of the Fifty-sixth Legislature of Texas, 1959,<sup>1</sup> known as the Texas Shrimp Conservation Act.

<sup>1</sup> This article.

Trawls and Spreading Devices in Coastal Waters of Orange and Jefferson Counties; Shrimp Taken from Coastal Waters of Another State

Sec. 11A. Notwithstanding any other provision of this Act, it shall be lawful to possess or

have on board any boat in the coastal waters of Orange or Jefferson County any trawl and the spreading device therefor which may be lawfully used in the coastal waters of another state, provided (1) that such trawl and equipment are immediately en route to or from a home port or destination on land, (2) that such trawl and equipment have been used during open season on shrimp in such state, and (3) that such trawl and equipment are not used or intended for use in the coastal waters of this State in violation of this Act. It is also lawful to possess or have on board any boat in the coastal waters of Orange or Jefferson County any shrimp which are lawfully caught in the coastal waters of another state if the catch is immediately en route to or from a home port or destination on land.

Use of Commercial Bay-Bait Shrimp Boat License; License Fees as Privilege Tax; Remission of Moneys; Use

Sec. 12. (a) Any valid "Commercial Bay-Bait Shrimp Boat License," as provided for in House Bill No. 12, Chapter 187, Acts of the Fifty-sixth Legislature of Texas, 1959,<sup>1</sup> which has been issued by the Commission during the months of January and February, 1963, may be used by the holder thereof in lieu of a Commercial Bay Shrimp Boat License or of a Commercial Bait-Shrimp Boat License until the first day of March A.D. 1964.

(b) The license fees provided for herein are hereby expressly declared to be a privilege tax for the privilege of taking or catching, attempting to take or catch, buying, selling, unloading, transporting or handling, in any manner, any shrimp within the jurisdiction of this State.

All moneys received from the sale of licenses provided for herein and all moneys received from penalties assessed for violation of this Act, after deduction of fees as allowed by law, shall be remitted to the Game and Fish Commission at Austin not later than the tenth day of the month following the date of collection, and shall be deposited by said Commission in the State Treasury to the credit of the Special Game and Fish Fund. The proceeds of such licenses shall be used by the Game and Fish Commission to enforce the provisions of this Act and the laws of this State relating to shrimping, salt-water fishing, oystering, and other commercial edible aquatic life.

<sup>1</sup> This article.

#### Violations and Penalties

Sec. 13. (a) Any person who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor shall be, for the first offense, fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200); and, for the second offense, shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or be sentenced to serve not less than ten (10) days nor more than sixty (60) days in the county jail or shall be punished by both such fine and imprison-

ment; and, for the third and all subsequent offenses, shall be fined not less than Five Hundred Dollars (\$500) nor more than Two Thousand Dollars (\$2,000) and shall be confined in the county jail for not less than thirty (30) days nor more than six (6) months.

(b) Whenever a vessel is involved in the violation of any provision of this Act, without in anywise detracting from or mitigating against the presumption of innocence, the captain of said vessel may be considered primarily responsible for such violation, and each member of the crew may also be held responsible therefor, but the punishment for such violation shall be assessed only against the captain and crew members, or one or more of them, actually found to be guilty thereof. The owner of said vessel shall not be guilty of such violation unless it be also charged and proved that such owner knowingly directed, authorized, permitted, agreed to, or aided or acquiesced in such violation.

(c) Each day on which a violation occurs shall be considered, and is hereby expressly defined, declared and made a separate, distinct and new offense.

(d) Upon conviction, for the third and all subsequent offenses, of violating any provision of this Act any and all licenses under which the operations involved in the violation are being conducted, issued by the Commission, shall automatically be cancelled, and such licenses shall not thereafter be renewed or reissued for a period of twelve (12) months from the date of conviction.

(e) It shall be unlawful for any person to operate in any manner upon any of the coastal waters of this State without having first secured the proper and appropriate license required by this Act and any person failing or refusing to secure such license shall be guilty of a misdemeanor and upon conviction shall be punished as for a violation of any other provision of this Act.

(f) It shall be unlawful for any person whose license has been cancelled as herein provided to do business without a new license or to possess another license for the prohibited period and any person violating this provision shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not less than Two Thousand, Five Hundred Dollars (\$2,500) nor more than Five Thousand Dollars (\$5,000) and shall be confined in the county jail for not less than six (6) months nor more than one (1) year.

(g) Any shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer or other person holding a license issued by the Commission who knowingly unloads, buys, or handles in any way any shrimp from an unlicensed commercial gulf shrimp boat, or unlicensed commercial bay shrimp boat, or who knowingly unloads, buys or handles in any way any shrimp of a

prohibited size, or shrimp which has been caught in either the inside or outside waters of this State during the closed season of such waters, or bait shrimp in violation of any provision of this Act, or any bait-shrimp dealer who knowingly unloads, buys or handles in any way from an unlicensed commercial bait-shrimp boat any bait shrimp shall be deemed guilty of a misdemeanor and upon conviction shall suffer the same penalties of fine, or imprisonment, or both fine and imprisonment, and automatic cancellation of license, as provided by this Act for the violation of other provisions of this Act.

(h) For the purposes of this Act the words "second offense" and the words "third and subsequent offenses" shall be construed to mean offenses for which convictions have been obtained within three (3) years prior to the date of the offense charged.

#### Deputies and Wardens; Patrol Vessels or Aircraft

Sec. 14. An adequate number of deputies and wardens and of patrol vessels or aircraft shall be employed by the Commission in the coastal counties and coastal waters of this State in enforcing the provisions of this Act and the laws of this State relating to shrimp, saltwater fishing, oysters, and other commercial edible aquatic life.

[Acts 1959, 56th Leg., p. 407, ch. 187; Acts 1963, 58th Leg., p. 895, ch. 340, § 1; Acts 1963, 58th Leg., p. 1008, ch. 415, § 1; Acts 1965, 59th Leg., p. 776, ch. 367, § 1; Acts 1967, 60th Leg., p. 362, c. 173, § 4, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 2064, ch. 766, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 266, ch. 125, §§ 11 to 15, eff. Sept. 1, 1973.]

#### Saved From Repeal

*Acts 1963, 58th Leg., p. 757, ch. 287, which is incorporated in the Penal Auxiliary Laws in a note under article 978j, and which, inter alia, prohibits the taking of fish, aquatic life or marine animals from the waters within Cameron, Jim Wells, Hidalgo and Starr Counties, including the waters and abutting waters of Laguna Madre, but excluding the waters of the Gulf of Mexico, provides in section 15 that the Act shall not suspend or otherwise affect the Texas Shrimp Conservation Act, insofar as it relates to shrimp-ing activities in outside waters of the Gulf of Mexico.*

*Acts 1967, 60th Leg., p. 1959, ch. 730, The Uniform Wildlife Regulatory Act, codified as Penal Auxiliary Laws, art. 978j-1, conferring upon the Parks and Wildlife Commission the power and duty of protecting and regulating the harvest of wildlife resources in various counties and repealing various acts of a similar nature, provides in section 15, inter alia, that the Texas Shrimp Conservation Act, insofar as it relates to any shrimp-ing activities in outside waters of the Gulf of Mexico, shall not be repealed, altered or affected. See Penal Auxiliary Laws, art. 978j-1, § 15.*

**Art. 4075b-1. Use of Seines to Take Shrimp Outside State Waters for Personal Use; Restrictions; Limit; Penalty**

Sec. 1. It is lawful to take for personal use not more than 100 pounds of shrimp (in their natural state with heads attached) per seine per day during the open season in the outside waters of this State as defined in the Texas Shrimp Conservation Act (Article 4075-b, Vernon's Texas Civil Statutes), provided that it shall be unlawful to use any such seine within one mile of any natural or man-made pass leading from the inside waters to the outside waters of this State. Any seine used for the purpose of taking shrimp for personal use shall not exceed 400 feet in length, the mesh of which shall not be less than one and one-half inch square mesh except for the bag and 50 feet on each side of the bag, the mesh of which shall not be larger than one inch square mesh. The seine must be manually operated and all shrimp and other marine life not kept by the seining party shall be returned to the water. Provisions of Section 4 of the Texas Shrimp Conservation Act (Article 4075-b, Vernon's Texas Civil Statutes), shall apply to all such shrimp taken. It is unlawful to sell any shrimp taken as permitted in this Act.

Sec. 2. Unless otherwise provided by law, every person in a seining party who exceeds any privilege granted by this Act shall be deemed guilty of a violation of the Texas Shrimp Conservation Act (Article 4075-b, Vernon's Texas Civil Statutes), and shall be fined in accordance with the Act.

[Acts 1971, 62nd Leg., p. 1379, ch. 365, eff. May 26, 1971.]

**Art. 4075c. Texas Territorial Waters Act**

**Title of Act**

Sec. 1. This Act may be known and cited as the Texas Territorial Waters Act.

**Purpose of Act**

Sec. 2. It is the purpose of this Act to exercise and exert full sovereignty and control of the territorial waters of the State of Texas.

**Alien-owned Commercial Fishing or Shrimping Vessels; Licensing; Reciprocity and Retortion**

Sec. 3. (a) No commercial fishing boat license, commercial gulf shrimp boat license, commercial bay shrimp boat license, commercial bait shrimp boat license, or any other license which may hereafter be prescribed as a requirement for boats used in fishing or shrimping in the coastal waters of this State, shall be issued for any boat or vessel owned in whole or in part by any alien power or any subject or national thereof, or any individual who subscribes to the doctrine of international communism, or who shall have signed a treaty of trade, friendship and alliance or a nonaggression pact with any communist power. The Parks and Wildlife Department shall grant or withhold said licenses where other alien vessels are involved on the basis of reciprocity and retortion, unless the nation concerned shall be

designated as a friendly ally or neutral by a formal suggestion transmitted to the Governor by the Secretary of State of the United States. Upon the receipt of such suggestion the Department shall issue licenses for vessels of such nations without regard to reciprocity and retortion.

(b) The term "coastal waters," as used herein, has the meaning assigned to it by Section 3 of the Texas Shrimp Conservation Act (compiled as Section 3 of Article 4075b of Vernon's Texas Civil Statutes).

**Taking Natural Resources from Coastal Waters**

Sec. 4. It is unlawful for any unlicensed alien vessel to take by any means whatsoever, attempt to take, or having so taken to possess, any natural resource of the coastal waters of this State.

**Use of Port Facilities; Assistance from Coast Guard**

Sec. 5. It shall be the duty of the various port authorities and navigation districts of this State to prevent the use of any port facility in a manner which they reasonably suspect may assist in the violation of this Act. They shall endeavor by all reasonable means, which may include the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types other than warships of the United States, the presence of alien commercial fishing vessels within the coastal waters of this State, and shall transmit such information promptly to the Parks and Wildlife Department and to such law enforcement agencies of the State as the situation may indicate. Such districts and port authorities shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

**Duties of Harbor Pilots**

Sec. 6. All harbor pilots are required to promptly transmit any knowledge coming to their attention regarding possible violations of this Act to the appropriate navigation district or port authority or the appropriate law enforcement officials.

**Arrest of Vessel Masters and Crews; Taking Crews or Property before Court; Requesting Assistance from Coast Guard**

Sec. 7. All law enforcement agencies of the State, including but not limited to sheriffs and agents of the Parks and Wildlife Department, are empowered and directed to arrest the masters and crews of vessels who are reasonably believed to be in violation of this law, and to seize and detain such vessels, their equipment and catch. Such arresting officers shall take the offending crews or property before the court having jurisdiction of such offenses. All such agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when having knowledge of vessels operating in violation or probable violation of this Act within their jurisdictions when such agencies are without

means to effectuate arrest and restraint of vessels and their crews.

Violations and Punishments

Sec. 8. Any captain, master or owner of any unlicensed alien boat or vessel who violates any provision of Section 4 of this Act shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than

One Thousand Dollars (\$1,000), or by confinement in the county jail for not more than one year, or by both such fine and confinement.

Political Asylum

Sec. 9. No crew member or master seeking bona fide political asylum shall be fined or imprisoned hereunder.

[Acts 1965, 59th Leg., p. 532, ch. 275.]

# TITLE 68

## GARNISHMENT

### Article

4076. Who May Issue and When.  
4077 to 4083. Repealed.  
4084. Effect of Service of Writ.  
4085 to 4092. Repealed.  
4093. Effect of Such Sale.  
4094, 4095. Repealed.  
4096. Trial When Garnishee is Non-resident.  
4097, 4098. Repealed.  
4099. Current Wages.  
4100, 4101. Repealed.

### Art. 4076. Who May Issue and When

The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the defendant has not within his knowledge property in his possession within this State, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment.

[Acts 1925, S.B. 84.]

Art. 4077. Repealed by Rules of Civil Procedure (Sup.Ct. order July 26, 1960, eff. Jan. 1, 1961)

Arts. 4078 to 4083. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

### Art. 4084. Effect of Service of Writ

From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effect, shares, or interest as may be necessary to satisfy the plaintiff's demand. The defendant may, at any time before judgment, replevy any

effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in the court in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit.

[Acts 1925, S.B. 84.]

*Repealed in part by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Rule 664, Vernon's Texas Rules of Civil Procedure.*

Arts. 4085 to 4092. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

### Art. 4093. Effect of Such Sale

Such sale shall be valid and effectual to pass to the purchaser all right, title and interest which the defendant had in such shares of stock, or in such company; and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself.

[Acts 1925, S.B. 84.]

Arts. 4094, 4095. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

### Art. 4096. Trial When Garnishee is Non-resident

Should the garnishee be a foreign corporation, not incorporated under the laws of this State, and should its answer be controverted, the issues thus formed shall be tried in the court where the main suit is pending, or was tried; but if the garnishee whose answer is controverted, resided in some county other than the one in which the main case is pending or was tried, and is not a foreign corporation, then upon the filing of a controverting affidavit by any party to the suit, the plaintiff may file in any court in the county of residence of the garnishee having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of the judgment in such original suit and of the proceedings in garnish-

ment, including a certified copy of the plaintiff's application for the writ, the answer of the garnishee, and the affidavit controverting such answer. The court wherein such certified copies are filed shall try the issues made as provided by law.

[Acts 1925, S.B. 84.]

**Arts. 4097, 4098. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 4099. Current Wages**

No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness.

[Acts 1925, S.B. 84.]

**Arts. 4100, 4101. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

## TITLE 68A

### GOOD NEIGHBOR COMMISSION OF TEXAS

#### Article

4101-1. Expired.

4101-2. Good Neighbor Commission Continued; Powers and Duties; Compensation; Expenses.

#### Art. 4101-1. Expired

Acts 1945, 49th Leg., p. 133, c. 91, created a Good Neighbor Commission of Texas. It provided for the appointment of members for a term of two years at the end of which period the act should cease to exist unless otherwise provided by law. The Good Neighbor Commission was continued by Acts 1947, 50th Leg., p. 1017, ch. 435. See art. 4101-2.

#### Art. 4101-2. Good Neighbor Commission Continued; Powers and Duties; Compensation; Expenses

##### Purpose; Creation of Commission; Terms

Sec. 1. The purpose of this Act is to continue the Good Neighbor Commission of Texas as originally created by Acts, 1945, Forty-ninth Legislature, page 133, Chapter 91, by House Bill No. 804 of said Session of the Legislature,<sup>1</sup> and the same is hereby continued in so far as the same is not inconsistent with the provisions of this Act; and so far as said Act of the Forty-ninth Legislature is inconsistent with this Act, the same is amended hereby as herein provided. There is hereby created the Good Neighbor Commission of Texas which shall be composed of nine (9) members, each of whom shall be a citizen of the United States and a resident of the State of Texas, and shall be appointed by the Governor with advice and consent of the Senate. Three (3) of such members shall be appointed for terms of two (2) years from the effective date of this Act; three (3) shall be appointed for terms of four (4) years from such effective date; and three (3) for terms of six (6) years from such date. Each two (2) years after the effective date of this Act the Governor shall appoint three (3) members of this Commission for a term of six (6) years.

<sup>1</sup> Article 4101-1.

##### Vacancies; Quorum

Sec. 2. Vacancies in the membership of the Commission shall be filled, as in the first instance, for the unexpired term. Five (5) members of the Commission shall constitute a quorum for the transaction of business.

##### Duties

Sec. 3. It shall be the duty of the Commission to devise and put into effect methods by which inter-American understanding and good will may be promoted and inter-American relations advanced without resort to punitive measures or the application of civil or criminal sanctions.

#### Powers

Sec. 4. The Commission shall have the power

a. To elect from its members a chairman and other such officers as it may be deemed desirable. All officers of the Commission shall serve as such only during the pleasure of the Commission.

b. To hold such meetings at such times as the Commission may designate.

c. To conduct such research, investigations, and inquiries as may be necessary to inform the Commission as to matters concerning inter-American relations.

d. To appoint committees from its membership and prescribe their duties.

e. To appoint consultants and committees to the Commission.

f. To make rules and regulations for its government and that of its officers and committees; and to prescribe the duties of its officers, consultants and employees.

g. To employ an executive director, a coordinator of migrant labor, and such other employees as it may think necessary and to fix the pay and compensation of such employees within the limits of funds made available to it by the General Appropriations Act.

h. To accept contributions from private sources, all of which may be deposited in a bank or banks in an account to be known as the Good Neighbor Commission of Texas Fund to be used at the discretion of the Commission in compliance with the wishes of the donor, provided, however, that such funds shall not be used to supplement salaries appropriated from General Revenue.

i. To coordinate the work of federal, State and local governmental units toward the improvement of travel and living conditions of migrant laborers in Texas. In furtherance of this purpose, the Commission shall:

(1) Develop specific programs, in coordination with individual State agencies, to achieve the betterment of migrants' travel and living conditions, such programs to be promulgated and enforced by the agency or agencies concerned;

(2) Analyze federal and State rules and regulations affecting migrant labor to determine their effect on Texas citizens and consult with federal and State agencies in the promulgation and formulation of rules and regulations;



(3) Survey conditions and study problems related to migrant labor in Texas;

(4) Hold public hearings on matters pertaining to migrant labor;

(5) Advise and consult with local governmental units, and with interested groups and organizations concerning matters affecting migrant labor;

(6) Facilitate and endorse interdepartmental agreements and arrangements to effectuate the purpose of this Act;

(7) Perform any other functions which may be necessary for improving the well-being of migrant laborers;

(8) Report to the Governor and the Legislature annually or more frequently as indicated, on developments arising under Subdivisions (1) through (7).

**Offices; Reports**

Sec. 5. The Commission shall maintain its office in the City of Austin and shall hold at least one meeting each year in the City of Austin. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Gov-

ernor and to the presiding officer of each House of the Legislature of its activities.

**Compensation; Expenses**

Sec. 6. No member, consultant, or officer of the Commission shall receive any compensation for his services in acting in such capacity but shall be paid his actual traveling and other necessary expenses incurred in attending the meetings of the Commission and in the discharge of his duties as a member, consultant, or officer, upon verified and itemized accounts approved by the chairman of the Commission. The necessary clerical and other expenses of the Commission shall be paid in like manner.

**Assistance by Officers, Etc.; Payment of Expenses**

Sec. 7. All officers, departments, and agencies of the State government shall, when requested by the Commission, render to it such assistance as it may require in the discharge of its duties. All expenses incident to the rendering of such assistance, other than the salaries of the officers or employees of such departments and agencies, shall be paid from the Fund made available to the Commission by appropriation.

[Acts 1947, 50th Leg., p. 1017, ch. 435; Acts 1965, 59th Leg., p. 213, ch. 86, § 1, eff. Sept. 1, 1965; Acts 1971, 62nd Leg., p. 707, ch. 72, § 1, eff. April 26, 1971.]

## TITLE 69

### GUARDIAN AND WARD [Repealed]

Arts. 4102 to 4329. Repealed by Acts 1955,  
54th Leg., p. 88, ch. 55, § 434

See, now, Probate Code in Volume 2.

# TITLE 70

## HEADS OF DEPARTMENTS

Chapter	Article
1. Secretary of State .....	4330
2. Comptroller of Public Accounts .....	4342
3. State Treasurer .....	4367
4. Attorney General .....	4394
4-A. State Auditor .....	4413a-1
4-B. Interstate Cooperation .....	4413b-1
4-C. Southern Interstate Nuclear Compact .....	4413c-1
4-D. State-Federal Relations .....	4413d-1
5. Department of Public Safety .....	4413(1)
6. Veterans' Preferences .....	4413(30)
7. Intergovernmental Cooperation .....	4413(32)
8. Publications of Executive Departments and State Agencies .....	4413(33)
9. Commissions and Agencies .....	4413(34)
10. Department of Community Affairs .....	4413(201)

### CHAPTER ONE. SECRETARY OF STATE

#### Article

- 4330. Appointment and Bond.
- 4331. General Duties.
- 4331a. Duties as to Records of Officers of Church Communions.
- 4331b. Exchange of Reports.
- 4332. Sale of Reports.
- 4333. Advance Sheets.
- 4334. Reports Sent to Whom.
- 4335. Officers Entitled to Laws.
- 4336. How Distributed.
- 4337. May Sell Copies of Laws.
- 4338. Revision.
- 4339. Receipt for Books.
- 4340. Chief Clerk; Assistant Secretary of State.
- 4341. Commission.
- 4341a. Repealed.

#### Art. 4330. Appointment and Bond

By and with the advice and consent of the Senate, the Governor shall appoint a Secretary of State who shall continue in office during the term of service of the Governor by whom he was appointed. Such appointee shall first give a bond in the sum of twenty-five thousand dollars payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office.

[Acts 1925, S.B. 84.]

#### Art. 4331. General Duties

Among other duties the Secretary of State shall:

1. Keep his office in the City of Austin or other place where the sessions of the Legislature may be held.

2. Appoint a chief clerk<sup>1</sup> and such number of assistant clerks as may be authorized by law.

3. Affix the seal of the State to all certificates of official character that may emanate from his office.

4. Keep a fair register of all the official acts of the Governor, and when required shall lay the same and all minutes and other papers in relation thereto before the Legislature or either branch thereof.

5. Keep in a separate suitable book a complete register of all the officers appointed and elected in this State, and commission them when not otherwise provided by law.

6. Arrange and preserve all the books, maps, parchments, records, documents, and all papers that have been or may be properly deposited there, and sealed with the seal of the State, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office, which copies shall be as legal and conclusive in evidence, and to all intents and purposes, in the courts of this State, as the originals would have been; and furnish on request such copies to the Governor, the Legislature or either branch thereof.

7. Attend at every session of the Legislature to receiving bills which have become laws, and immediately after the close thereof cause all enrolled joint resolutions thereof and all such bills to be bound together in a volume to be kept in his office, the date of the session to be placed thereon, and deliver a certified copy thereof and index thereof to the Board of Control, and carefully examine and compare the printed copy with the certified copy and correct each error contained in the former.

8. Repealed by Acts 1951, 52nd Leg., p. 218, ch. 131, § 3.

9. Turn over to the person in charge of the State Library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office, and all printed volumes of the statutes or laws of any Nation, State or Territory, and in like manner turn over to the Supreme Court Librarian all volumes of reports of any courts of any other Nation, State or Territory received by him.

10. Forward to the Librarian of Congress, the Secretary of State of the United States, the Secretary of the Treasury of the United States, and the executive de-

partments of each State of the Union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the Legislature at the expense of the State.

11. Forward to each county clerk for the use of the county one copy of each Act of Congress which may be received in his office.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 218, ch. 131, § 3.]

<sup>1</sup> Office of chief clerk abolished and office of Assistant Secretary of State created, see article 4340, post.

#### Art. 4331a. Duties as to Records of Officers of Church Communions

That it shall be the duty of the Secretary of State, on the payment of the sum of two dollars and fifty cents, to record in a well bound book to be kept in his office, the names of all trustees appointed by any State organization of any church communion in the State, provided such appointment is duly authenticated by some officer authorized by law in this State to take acknowledgment of deeds; and it shall be the further duty of the Secretary of State to furnish a certified copy of said appointments to any court in this State on application for the same by any judge or clerk of any court in this State, and the sum of one dollar and fifty cents shall be taxed as cost for copy in any proceeding in which such copy may be used, to be collected and paid for as any other costs; and it shall be the duty of the judge of any court before making the appointment of any receiver, to apply to the Secretary of the State to be furnished with such certified copy before such appointments are made. That any communion shall have the right from time to time to change, appoint or elect its trustee or trustees.

[Acts 1927, 40th Leg., p. 68, ch. 45, § 4.]

#### Art. 4331b. Exchange of Reports

The Secretary of State is hereby authorized and directed in addition to the exchanges he is now authorized to make under existing law, to make exchanges of the reports of the several appellate courts of this State, of the Supreme Court and the Court of Criminal Appeals, of the Session Acts of the Legislature, of the existing and future revised Civil and Criminal Statutes of this State, and of other State publications and department reports of this State, for the court reports, session acts, revised statutes, civil and criminal, and other State publications and department reports of the United States Government, of the other States of the Union, and of foreign countries, for the benefit of the law library of the University of Texas, provided that the Secretary of State shall always keep on hand a sufficient number of copies of all State publications to meet the reasonable current demands of the State.

[Acts 1927, 40th Leg., p. 92, ch. 66, § 1.]

#### Art. 4332. Sale of Reports

The Secretary of State shall receive from the Supreme Court Reporter the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals; he may sell single copies of such reports for the sum of the contract price for printing, exclusive of postage or express charges; he shall deliver to the State Treasurer the proceeds of all sales made by him, and shall make a full statement of such sales in his biennial report.

[Acts 1925, S.B. 84.]

#### Art. 4333. Advance Sheets

The Secretary of State may transmit advance sheets of the reports as the publishing progresses, upon receipt of the price for the volume. The purchaser may return all the forms of the volume to the Secretary of State without further expense except the cost of transmitting the same to and from the State Department.

[Acts 1925, S.B. 84.]

#### Art. 4334. Reports Sent to Whom

The Secretary of State shall deliver, by mail or otherwise, to each appellate judge, the Attorney General, the Governor, each district judge, each professor of law of the University of Texas, the librarian of said University, and to the county judge of each county for the use of the counties, one copy of the reports of said appellate courts hereafter issued; also furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the Department of State, or when they are hereafter delivered by the State to either of said officers or authorities, the Secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report.

[Acts 1925, S.B. 84.]

#### Art. 4335. Officers Entitled to Laws

The following shall be entitled to receive one (1) copy of each of all General and Special Laws hereafter passed by the Legislature, to wit: The Governor, each Member of the Legislature, the Judges of the District and Appellate Courts throughout the State, and to the heads of departments, upon request.

[Acts 1951, 52nd Leg., p. 599, ch. 353, § 1.]

#### Art. 4336. How Distributed

The Secretary of State shall distribute the printed laws of each Session of the Legislature to the officers named in the preceding Section either by mail or delivery in person.

[Acts 1951, 52nd Leg., p. 599, ch. 353, § 1.]

**Art. 4337. May Sell Copies of Laws**

Said Secretary is authorized to sell copies of the general and special laws of the State of Texas that have or may be published at a price not exceeding twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the State. Any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the State Treasury.

[Acts 1925, S.B. 84.]

**Art. 4338. Revision**

Whenever a revision of the laws of the State has been or shall be subscribed for, or published by the State, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the appellate and district courts, to each clerk of the district and county courts, and appellate courts, and to each justice of the peace that may be a resident in said county. The Secretary of State shall also deliver to each executive officer at the seat of government one of said copies.

[Acts 1925, S.B. 84.]

**Art. 4339. Receipt for Books**

Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office. Said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the examination of any citizen of this State. If any said officer fails or refuses to deliver any said book to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any said book that he shall so fail or refuse to deliver.

[Acts 1925, S.B. 84.]

**Art. 4340. Chief Clerk; Assistant Secretary of State**

The office of Chief Clerk to the Secretary of State is hereby abolished, and the office of Assistant Secretary of State is hereby created. The Assistant Secretary of State shall be an attorney-at-law, and he shall have had at least five (5) years actual practice in this State prior to his appointment and shall perform all the duties required by law to be performed by the Secretary of State when the said Secretary of State is absent or unable to act for any reason. Such assistant shall perform such other duties as shall be required of him by the Secretary of State and his compensation shall be four thousand dollars per annum. There is hereby appropriated out of the State Treasury the sum of \$2,500.00 to pay the compensation of said Assistant Secretary of State for the remainder of this fiscal year ending August 31,

1927, and this appropriation shall supersede the present appropriation for the compensation of the Chief Clerk in the Secretary of State's office for the remainder of said fiscal year. The said Assistant Secretary of State shall serve as such so long as the Secretary of State appointing him is in office.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 55, ch. 39, § 1.]

**Art. 4341. Commission**

The Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission.

[Acts 1925, S.B. 84.]

**Art. 4341a. Repealed by Acts 1969, 61st Leg., p. 207, ch. 83, § 1, eff. April 17, 1969****CHAPTER TWO. COMPTROLLER OF PUBLIC ACCOUNTS****Article**

- 4342. Election and Term.
- 4343. Bond.
- 4344. Certain Duties.
- 4344a. Transfer of Balance in Dormant Fund to General Revenue Fund.
- 4344b. Purpose; Construction of Laws; Reorganization and Consolidation of Divisions; Electronic Data Processing Center.
- 4345. Account of Comptroller.
- 4346. Custodian of Obligations.
- 4346a. Cancellation of Unneeded Bonds of Public Corporations.
- 4347. When Accounts Closed.
- 4348. Statement to Governor.
- 4348a. Preparation of Financial Statements and Itemized Estimates; Probable Receipts and Disbursements; Committee on State Revenue Estimates.
- 4349. Special Claims.
- 4350. Warrants on Treasurer.
- 4351. Notified of Deficiencies.
- 4351½. Suit Against State on Claims.
- 4351a. Limiting Amount of Deficiency Warrants.
- 4352. Chief Clerk.
- 4353. Deposit Warrants.
- 4354. Deposit Receipts.
- 4355. Claims and Accounts.
- 4356. Claims Classified.
- 4357. Auditing Claims and Issuing Warrants.
- 4358. Pay Warrants.
- 4359. Pay Warrants Register.
- 4360. Pension Warrants.
- 4361. Registration of Bonds.
- 4362. Bond Clerk; Assistants; Duties.
- 4363. Account by Funds Kept Separate.
- 4364. Ledgers.
- 4365. Duplicate Warrants.
- 4366. To Examine and Cancel Warrants.
- 4366a. Money Received Under Federal Flood Control Law; Disposition.
- 4366b. Federal Revenue Sharing Trust Fund.

**Art. 4342. Election and Term**

At each biennial general election a Comptroller of Public Accounts shall be elected for a term of two years. The word "Comptroller", whenever used in any law of this State, shall mean the Comptroller of Public Accounts of the State of Texas.

[Acts 1925, S.B. 84.]

**Art. 4343. Bond**

Within twenty days after receipt of notice of his election or appointment and before he enters upon the duties of his office, the Comptroller shall give a bond with a good and solvent surety company, authorized to do business in this state, in the sum of seventy-five thousand dollars, payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation.

If the Comptroller shall willfully neglect or refuse to perform any duty of the Comptroller as set out in this Chapter or elsewhere in the Statutes of Texas he shall forfeit to the State a sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each day that he shall so neglect or refuse to perform such duty; and it is hereby expressly provided that the surety company executing the Comptroller's bond, as herein provided for, shall be jointly and separately liable with the Comptroller for such sums to be forfeited.

The penalties provided for in this chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 73, § 1.]

**Art. 4344. Certain Duties**

Among other duties the Comptroller shall:

1. Procure a seal with words "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things belonging in his office and deliver the same in good condition to his successor.

[Acts 1925, S.B. 84.]

**Art. 4344a. Transfer of Balance in Dormant Fund to General Revenue Fund**

The Comptroller, with the consent and approval of the State Auditor and Efficiency Expert, and the State Treasurer, may, at any time, transfer any balance in any dormant fund, the source of which is unknown or the purpose for which it was collected has become moot, into the General Revenue Fund. Any

transfer so made may be subject to appropriation as a refund by the Legislature, should the source and purpose of such fund become known and active at any time in the future.

[Acts 1945, 49th Leg., p. 199, ch. 152, § 2.]

**Art. 4344b. Purpose; Construction of Laws; Reorganization and Consolidation of Divisions; Electronic Data Processing Center**

(1) It is the purpose of this Act to authorize the Comptroller of Public Accounts to organize and maintain within his department such divisions of service as are necessary for the efficient and orderly conduct of the work of the department. The enumeration in laws prior to this Act of certain designated divisions and chiefs of divisions of the office of the Comptroller of Public Accounts and the imposition of specific duties on named divisions and chiefs of divisions shall not be construed as mandatory and nothing therein shall prohibit the Comptroller of Public Accounts from effecting a reorganization or consolidation of divisions, operations, functions or positions provided for by this Chapter or other laws, in the interest of more efficient and economical management and direction of the office of the Comptroller of Public Accounts.

(2) The Comptroller of Public Accounts is authorized to establish and operate a central electronic computing and data processing center to be used to maintain the central accounting records of the state, to prepare payrolls and other warrants, to audit tax reports, and to perform such other accounting and data processing activities as may be economically and practically adapted to the use of this equipment. In order to provide for the orderly and economical use of this equipment the Comptroller is further authorized to prescribe and revise claim forms, registers, warrants, and other documents submitted in support of payroll or other claims or to support tax or any other payments to the state.

The Comptroller of Public Accounts and any state agency as that term is defined in "The Interagency Cooperation Act" (codified as Article 4413(32) Vernon's Revised Civil Statutes) may enter into an agreement under the provisions of the Interagency Cooperation Act for electronic computing or data processing services.

[Acts 1959, 56th Leg., p. 704, ch. 324, § 1.]

**Repeal in Part**

*Acts 1965, 59th Leg., p. 685, ch. 325, § 7, repealed this article to the extent of conflict with chapter 325, relating to automatic data processing systems for state agencies. See article 6252-12a, § 8.*

**Art. 4345. Account of Comptroller**

The account of the Comptroller against the State shall not be passed to the Treasurer until approved by the Secretary of State.

[Acts 1925, S.B. 84.]

**Art. 4346. Custodian of Obligations**

Except as otherwise specifically provided, all deeds to the State, all liens, mortgages, bonds, notes, and other securities for money given to the State or any officer for the use of the State, contracts involving pecuniary obligations to the State, and all other documents or instruments creating a pecuniary obligation in favor of the State, shall be deposited in the office of the Comptroller, except that all deeds conveying land or interests in land to the State of Texas for highway purposes, shall hereafter be deposited in the offices of the State Highway Department at Austin, Texas. The Comptroller of Public Accounts is hereby directed to transfer to the State Highway Department all deeds and conveyances of land or interests in land to the State of Texas for highway purposes which have heretofore been filed and deposited in the office of the Comptroller of Public Accounts along with all files and filing equipment heretofore used by him in filing and maintaining such records.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 587, ch. 229, § 1.]

**Art. 4346a. Cancellation of Unneeded Bonds of Public Corporations**

Sec. 1. Terms used in this Act, unless provided herein to the contrary, shall have the following meanings:

"Public Corporations" shall include counties, cities, districts, authorities, non-profit corporations, public agencies, and all other entities authorized by law to issue bonds which are to be registered in the office of the Comptroller of Public Accounts.

"Comptroller" means the Comptroller of Public Accounts of the State of Texas.

"Registered or unregistered bonds of any Public Corporation which have been left in and still remain in the office of the Comptroller may be considered as 'unneeded' after the expiration of five years from the date of the bonds."

Sec. 2. It shall be the duty of the Comptroller, from time to time, to cancel by perforation all unneeded bonds and to return them by mail, express or freight, to the respective issuers, at the expense of such issuers. Provided, that not less than thirty days before he shall thus cancel unneeded bonds of a Public Corporation he shall give notice, by registered or certified mail, to such Public Corporation of the proposed cancellation. Such notice shall be addressed in accordance with the latest information available in the office of the Comptroller, and if the Comptroller receives advice that the written notice is undeliverable because such Public Corporation is no longer in existence, or for any other reason, he shall, in like manner and for a like thirty day period of time, notify the county judge of the county in which the Public Corporation was situated, wholly or partially, of such intended cancellation and of such failure of delivery of the ini-

tial notice. Such Public Corporation or such county judge as the case may be, prior to the date fixed for cancellation, upon written notice and upon execution of a receipt in the form prescribed by the Comptroller may repossess such bonds. Any shipping expense involved in such transaction shall be paid by the Public Corporation involved, or by the county whose county judge shall have acted in its behalf. A permanent record shall be made in the office of the Comptroller of any such cancellation or return of unneeded bonds.

[Acts 1959, 56th Leg., p. 436, ch. 196.]

#### Art. 4347. When Accounts Closed

The accounts of the Comptroller shall be annually closed on the last day of August; and he shall exhibit all books, papers, vouchers and all other matters pertaining to his office, for the examination of either branch of the Legislature, or any committee which may be by them appointed, whenever required by them to do so.

[Acts 1925, S.B. 84.]

#### Art. 4348. Statement to Governor

In addition to the reports required by the Constitution, the Comptroller shall exhibit to the Governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the State, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the Treasury for the ensuing year, specifying therein each object of the expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed.

[Acts 1925, S.B. 84.]

#### Art. 4348a. Preparation of Financial Statements and Itemized Estimates; Probable Receipts and Disbursements; Committee on State Revenue Estimates

a. In preparing the financial statements and in making the itemized estimates required by Article III, Section 49a of the State Constitution, the Comptroller of Public Accounts shall take into consideration his estimate of the probable receipts and disbursements as of August 31st for the then current fiscal year.

The words "probable receipts" shall mean and include all such moneys estimated by the Comptroller to be received by the State through August 31st of the then current fiscal year; and his financial statements shall show the fund or funds to which such receipts are to be credited.

The words "probable disbursements" shall mean, and the Comptroller shall consider and report under such term, only those payments estimated to be made and warrants which will be issued by the State through August 31st of the then current fiscal year.

In addition thereto, for the information of the Governor and the Legislature the Comptroller shall list other outstanding appropriations which may exist after the end of the then current fiscal year, but they shall not be deducted from the cash condition of the Treasury or the anticipated revenues of the next biennium for the purpose of certification.

It is the Legislative intent that the Comptroller's reports, estimates, and certifications of available funds in each instance shall be based upon the actual or estimated cash condition of the State Treasury and that outstanding and undisbursed appropriations at the end of each biennium shall be considered as probable disbursements of the succeeding biennium in the same manner that earned but uncollected income of a current biennium is considered in probable receipts of the succeeding biennium. The provisions of this Act shall be immediately effective and the Comptroller shall revise his current report and estimates in accordance therewith.

b. In carrying out the duties imposed upon the Comptroller of Public Accounts by Section 49a of Article III of the Constitution of the State of Texas, the Comptroller shall, in submitting to the Legislature and the Governor estimates of anticipated revenues, set forth in his estimate report the detailed calculations and all other pertinent information considered by him in arriving at such estimates.

There is hereby created the Committee on State Revenue Estimates which shall be composed of the Governor, or his duly appointed representative, who shall serve as Chairman, the Director of the Legislative Budget Board, and the State Auditor. The Committee shall carefully review all revenue estimates prepared and submitted by the Comptroller of Public Accounts pursuant to Section 49a of Article III of the Constitution of the State of Texas and shall report the result of such review in an official public document to the Budget Division of the Governor's Office, the Legislature and the Comptroller. The Comptroller shall furnish additional information to the Committee, as it may deem necessary, to clarify any of the revenue estimates contained in the estimate report.

[Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 1.]

#### Art. 4349. Special Claims

Each sheriff, attorney or other party holding claims against the State for which no warrant has been issued, and the appropriation for which has been exhausted, shall present them to the Comptroller for his consideration at least thirty days before the meeting of each regular session of the Legislature. The Comptroller shall not audit any such claim not presented within said time until all claims presented prior to that time have been considered and passed upon by him.

[Acts 1925, S.B. 84.]

**Art. 4350. Warrants on Treasurer**

No warrant shall be issued to any person indebted to the State, or to his agent or assignee, until such debt is paid.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

**Art. 4351. Notified of Deficiencies**

All heads of departments, managers of State institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the State for any deficiency that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next Legislature. Such estimate shall be immediately filed with the Governor, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the Governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file same with the Comptroller; and the same shall be authority for the Comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the Comptroller, or paid by the Treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claims, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the Legislature thereafter. The provisions of this article shall not apply to fees and dues for which the State may be liable under the general laws. When any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once but must be approved by the Governor as provided in this article.

[Acts 1925, S.B. 84.]

**Art. 4351½. Suit Against State on Claims**

That all concurrent resolutions heretofore adopted at any regular or special session of the legislature of the State of Texas for the purpose of granting to any persons, firms or corporations permission to sue the State of Texas through any of its courts, are hereby validated and made effective to grant such permission, both as to suits already filed and pending in the courts of this state and as to any suits which may hereafter be filed by virtue of the permission granted by such resolutions heretofore adopted. Provided, however, that nothing herein shall operate to create any cause of action against the State of Texas.

[Acts 1934, 43rd Leg., 3rd C.S., p. 27, ch. 13, § 1.]

**Art. 4351a. Limiting Amount of Deficiency Warrants**

It shall be lawful for the Governor to approve deficiency warrants as provided for in Article 4351, Revised Civil Statutes, 1925, to any amount, the aggregate of which does not exceed Two Hundred Thousand (\$200,000.00) Dollars, for all purposes for which he is permitted to approve such deficiency warrants. If any deficiency warrants are approved above this amount, such warrants are invalid and unredeemable by the State Treasurer.

[Acts 1927, 40th Leg., p. 232, ch. 158, § 1.]

**Art. 4352. Chief Clerk**

The Comptroller shall appoint a chief clerk, who shall take the official oath and give bond in the sum of ten thousand dollars payable in like manner as the bond of the Comptroller, conditioned for the faithful performance of his duties. Said clerk shall perform the duties of the Comptroller when the Comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the Comptroller supervise the keeping of the books, records and accounts of the department, and perform such other duties as may be required of him by law and by the Comptroller. If the office of the Comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as Comptroller until a Comptroller is appointed and qualified.

[Acts 1925, S.B. 84.]

**Art. 4353. Deposit Warrants**

The Comptroller shall have printed uniform deposit warrants, which shall be prepared in triplicate and marked "original," "duplicate," and "triplicate," respectively, and which shall be serially numbered. He shall provide for the use of his department a warrant register in which to enter such deposit warrants in consecutive order. When a deposit warrant is prepared, it shall be registered in the deposit warrant register. A distribution of the amount stated in each deposit warrant shall be entered on the revenue analysis record containing accounts for each source of revenue. The triplicate deposit warrant shall be, on receipt by the Treasurer of the amount stated therein, receipted by the Treasurer and delivered to the person making the deposit. The original shall be retained by the Treasurer, who shall file the same numerically, and the duplicate shall be, on the receipt of the amount stated therein, receipted by the Treasurer and by him returned to the Comptroller, who shall file the same numerically. The printed forms for these warrants and the warrant register shall be so prepared and arranged that the original, duplicate, and triplicate may, by use of carbon sheets, all be prepared in one and the same writing. No deposit shall be received in or into the State Treasury on any account, except upon a deposit warrant issued as herein provided. The Comptroller shall furnish the Treasurer with a copy of the deposit warrant regis-



ter for deposits made each day, which shall constitute the Treasurer's deposit warrant register.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1; Acts 1951, 52nd Leg., p. 607, ch. 359, § 1.]

#### Art. 4354. Deposit Receipts

The Comptroller shall have printed uniform deposit receipts, to be issued by the Comptroller, to cover moneys and other securities received and held by the State Treasurer for Bond Investment Surety and Insurance Companies, State Depository Banks and all others for which no deposit warrant is issued, or the issuance of a deposit warrant which is deferred. Such receipts shall be prepared in triplicate and marked "original," "duplicate" and "triplicate," respectively, and shall be serially numbered. The printed form for these receipts shall be so prepared and arranged that the original, duplicate and triplicate may, by the use of carbon sheets be prepared at one and the same writing. The triplicate deposit receipt shall be, on receipt by the Treasurer of the items stated therein, receipted by the Treasurer and delivered to the person making the deposit, the original retained by the Treasurer and the duplicate receipted by the Treasurer and by him returned to the Comptroller, who shall file the same numerically. The Comptroller shall provide his office with appropriate registers, in which he shall register the deposit receipts issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued. The Comptroller shall also provide separate series of deposit receipts or authorization certificates for the receiving of bonds or securities purchased for the permanent funds of the State, and relinquishment of bonds sold or redeemed.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

#### Art. 4355. Claims and Accounts

All claims and accounts against the State shall be submitted on forms prescribed by the Comptroller and in duplicate, when required by him except claims for pensions, and shall be so prepared as to provide for the entering thereon, for the use of the Comptroller's Department, as well as other appropriate matters, the following:

1. Signature of the head of the department or other person responsible for incurring the expenditure.
2. Appropriation number, account number and fund to be charged.
3. Initials of the person ascertaining if there are funds available.
4. Initials of the person auditing the claim.
5. Number and date of warrant issued.
6. Initials of the person comparing the claim and warrant.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

#### Art. 4356. Claims Classified

There shall be three classes of claim forms as follows:

1. "General" which shall consist of:
  - (a) payrolls, covering departmental and institutional services;
  - (b) traveling expense vouchers;
  - (c) purchases and services (other than personal); and
  - (d) sheriff and court claims; and under the head of sheriff and court claims the Comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary.
2. "Special," covering all claims for which special warrants are issued.
3. "Pensions," the form for which shall be prescribed by the Comptroller.

[Acts 1925, S.B. 84.]

#### Art. 4357. Auditing Claims and Issuing Warrants

(a) No warrant shall be prepared except on presentation to the warrant clerk of a properly audited claim, certified to its correctness, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so certified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. No claim shall be paid from appropriations unless presented to the Comptroller for payment within two (2) years from the close of the fiscal year for which such appropriations were made, but any claim not presented for payment within such period may be presented to the Legislature as other claims for which no appropriations are available. No warrant shall be drawn against an appropriation of a special fund unless there is sufficient cash money in the fund in the State Treasury to pay such warrant, and no warrant, general or special, shall be released or delivered by the Comptroller unless there is sufficient balance in the appropriation against which the warrant is drawn to pay such warrant. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class: "general," "special," "pension," respectively. The claims, as paid, shall be filed in such method as may be found most advisable to the Comptroller. After the expiration of two (2) years such claims shall be removed from the files and stored as records.

(b) It is specifically provided, however, that as to all appropriations relating to new construction contracts, and to repair and remodeling projects which exceed the sum of Twenty

Thousand Dollars (\$20,000), including in either instance furniture and other equipment, architects' and engineering fees, and other related costs, any claim may be presented for payment within four (4) years from the close of the fiscal year for which such appropriations were made.

(c) If any person shall knowingly make a false certificate on any claim against the State for the purpose of authenticating any claim against the State, he shall be confined in the penitentiary not less than two (2) or more than five (5) years.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1; Acts 1953, 53rd Leg., p. 864, ch. 350, § 1; Acts 1957, 55th Leg., p. 1411, ch. 485, § 1; Acts 1959, 56th Leg., p. 809, ch. 366, § 1; Acts 1967, 60th Leg., p. 339, ch. 163, § 1, eff. May 12, 1967.]

#### Art. 4358. Pay Warrants

The Comptroller shall have printed uniform pay warrants, which shall be of three (3) classes: "general," "special," "pension." Such warrants shall be serially numbered and shall be of a color of paper different from the other class. A separate series of numbers may be used for warrants issued for payrolls to be paid from the General Revenue Fund, and for warrants issued for claims to be paid from "highway" or other special funds, when the Comptroller deems such special series of numbers advisable. Such warrants shall be prepared so as to provide for entering thereon in addition to other appropriate matters, the following:

1. Initials of the person in the Comptroller's Department comparing the warrant with the claim.
2. Designation of the fund against which the warrant is drawn.
3. Appropriation against which disbursement is to be charged.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1; Acts 1953, 53rd Leg., p. 864, ch. 350, § 1.]

#### Art. 4359. Pay Warrants Register

The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by class, number or otherwise. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such registry shall consist of an entry of the amount of the warrant, name of the payee, appropriation to which charged, and such other information as may be deemed advisable by the Comptroller. After a warrant has been prepared and registered as herein provided it shall be checked against the claim, and the warrant number shall be entered on the claim papers. The initials of the person checking the warrant with the claim shall be written on both the warrant and the claim, and the warrant together with the claim upon which it is based shall be passed to the Comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead; and such warrant

together with a copy of the warrant register shall then be passed to the State Treasury and registered in the Treasury, and signed by the State Treasurer or some person authorized by law to sign for him, and returned to the Comptroller's Department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it, and the Comptroller shall at his option take a receipt therefor and file the receipt in his office. The Comptroller shall also keep a "warrants cancelled register" in which shall be entered the details of all warrants cancelled.

It is hereby provided that a department, court, school, or other state agency may prepare and present payroll claims to the Comptroller prior to the end of the payroll period, which said payroll claims shall be verified by affidavit as to services theretofore actually performed within such payroll period prior to the date of such payroll claims; and such payroll claims need not be verified by affidavit as to any services to be performed during such payroll period subsequent to the date of such payroll claims. Such claims when so presented shall be prepared and approved as otherwise provided below. The Comptroller shall accept such payroll claim when presented and prepare warrants in payment thereof prior to date such claims become due and payable, and hold such warrants for delivery until the claims become due and payable. Such warrants shall be dated as of the due date of the claim and shall not be delivered to the claimant until the end of the pay period. The Treasurer is hereby authorized to countersign such warrants and to make such entry as to properly take them into account. In order that such warrants may be ready for delivery at the end of the pay period the Comptroller is authorized to make such rules and regulations as may be necessary for filing payroll claims in advance of the pay period, and for the preparation and writing of warrants in payment thereof to adequately and properly achieve such purpose.

One person shall be designated by the Comptroller as Chief of the Claims Division, and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1; Acts 1945, 49th Leg., p. 432, ch. 274, § 1; Acts 1953, 53rd Leg., p. 864, ch. 350, § 1.]

#### Art. 4360. Pension Warrants

Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered.

[Acts 1925, S.B. 84.]

#### Art. 4361. Registration of Bonds

The Comptroller shall procure for the use of his department suitable books to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall register alphabetically all

State, county, school, municipal and drainage or such other bonds required by law to be registered by him. Neither the bonds nor opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of the issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register. On the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed. When any bond is paid or redeemed the proper officer or the authority paying such bond shall notify the Comptroller of the fact and date of such payment or redemption, and all papers and documents pertaining to such bonds shall be filed and appropriately numbered.

[Acts 1925, S.B. 84.]

#### Art. 4362. Bond Clerk; Assistants; Duties

The Comptroller shall appoint a bond clerk whose term of office shall be at the pleasure of the Comptroller, and who shall first take the official oath and give bond in the sum of Ten Thousand (\$10,000.00) Dollars, payable to the Comptroller, conditioned upon the faithful performance of his duties. Such clerk shall, under the supervision, direction, and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of the preceding and succeeding articles, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerk, as provided herein. In the absence of the bond clerk the duties herein imposed upon such bond clerk may be performed in like manner by the chief clerk. The Comptroller shall also designate and appoint, from the personnel of his employees, assistants to the bond clerk. Such assistant or assistants, when designated by the Comptroller, shall, under the direction and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of Title 70, Chapter 2, of the Revised Civil Statutes of 1925, of the State of Texas, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerks as provided herein. The duties of such assistants when designated or appointed by the Comptroller, shall be in addition to and cumulative of any other duties that may be assigned to such employee. The appointment and designation of such assistant bond clerk or clerks shall be in

writing, certified under the seal of the Comptroller and filed with the bond clerk.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 11, c. 7, § 1.]

#### Art. 4363. Account by Funds Kept Separate

The Comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond, or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase, and with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities, which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; and also controlling accounts for interest to accrue on such bonds, to be set up at the beginning of each fiscal year, on bonds or other securities owned at that time, for interest to accrue for the fiscal year, and for interest on subsequent purchases during the year to be set up when such bonds or securities are purchased, each of which controlling accounts shall be balanced monthly and shall correspond with the like accounts kept by the State Treasurer.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

#### Art. 4364. Ledgers

The Comptroller shall maintain a double entry system of bookkeeping and shall keep such ledgers and accounts as may be necessary to show the sources of the State's revenues and the purposes for which expenditures are made, and shall provide proper accounting controls for the protection of the finances of the State.

1. The Comptroller shall keep the following ledgers: State General Ledger, Tax Collectors' Control Ledger, Tax Collectors' Ledger for Cash Accounts, Tax Collectors' Ledger for Current Year Assessments, Tax Collectors' Ledger for Occupation Taxes, Tax Collectors' Ledgers for Insolvent Taxes, Tax Collectors' Ledger for Delinquent Taxes, Departmental Suspense Ledger, General Land Office Suspense Ledger, Bond Ledgers for State-owned Bonds, Securities Ledgers, Appropriation Ledgers, or other ledgers as may be found necessary.

2. The Comptroller shall also keep supporting and analysis records as follows: General Journal, Deposit Warrant Registers, Pay Warrant Registers, Warrants Canceled Register, Suspense Cash Book, Bond Authorization Register, Securities Register, Tax Collectors' Journal, Tax Collectors' Report Register, Occupation Tax Register, Revenue Analysis, Expense

Analysis, or other records as may be found necessary.

3. The State General Ledger shall contain controlling and fund accounts. All accounts in the General Ledger shall be kept on a double-entry basis. All entries to the General Ledger shall be journalized and postings made from the General Journal. The following accounts shall be kept in the General Ledger: State Treasurer Cash Account, State Treasurer Bond Account, State Treasurer Securities in Trust, Warrants Payable, Departmental Suspense, General Land Office Suspense, Securities in Trust Fund Accounts Showing Net Balances, separate account for each fund, Fund Accounts for Bonds Owned, separate account for each fund, or other accounts as may be found necessary.

The accounts with the State Treasurer shall be charged with the cash on hand and in depository banks, and with all bonds and securities held for the funds of the State or in trust. The Comptroller shall charge the State Treasurer in totals of all deposit warrants and the deposit receipts as issued, and credit him with warrants paid, so that the balance in the Treasurer's hands, together with the balance in the State Depositories, shall agree with the balance shown by the accounts.

Accounts shall be kept for the purpose of showing the amounts of outstanding pay warrants of each class, which shall be credited with the warrants issued and charged with the warrants paid, so that the balances shall represent the aggregate amount of outstanding warrants.

Accounts shall be kept for funds, a separate account for each fund, which shall be credited with deposit warrants and charged with pay warrants issued: Balances of such accounts shall represent balances in the funds after taking into consideration all warrants issued. Accounts shall also be kept showing the bonds or securities owned by each fund.

4. REVENUE ANALYSIS.—A revenue analysis record shall be kept in which a distribution shall be made of the revenues derived by the State from all sources, and the amounts derived from each source. The sources of revenue received as represented by the deposit warrants issued therefor by the Comptroller shall be posted to this record.

5. EXPENSE ANALYSIS.—An expense analysis record shall be kept, in which a distribution shall be made of the disbursements made from State funds, which shall be classified by departments or institutions, by objects of expenditure, or other classifications as may be deemed advisable.

6. ACCOUNTS OF TAX COLLECTORS.—A ledger shall be kept which shall

contain controlling accounts against which the individual accounts with Tax Collectors shall be balanced. This ledger shall be kept on a double-entry basis, shall be self-balancing, and shall be balanced at the close of each month. Individual accounts shall be kept with Tax Collectors, which shall be charged with all amounts of taxes due the State, and which are to be collected by the Tax Collectors, or which have been collected by the Tax Collectors and have not been paid over to the State Treasurer; and credited with all payments, commissions, cancellations and other adjustments of such taxes allowed by law, which accounts shall be balanced monthly with the controlling accounts. Separate accounts shall be kept for current taxes and for delinquent taxes, or other accounts as may be necessary.

7. SUSPENSE LEDGER.—A suspense ledger shall be kept in which the accounts of the State Treasurer shall be stated in respect to moneys held by him pending the issuance of deposit warrants and moneys and securities held other than those for State purposes, for all which the Comptroller shall issue deposit receipts, posting the same to this ledger. It shall also include the accounts with heads of departments for all moneys received by them and deposited with the State Treasurer in suspense.

8. APPROPRIATION LEDGERS.—The Comptroller shall keep accounts with all appropriations made by the Legislature, an account being kept for each appropriation, which shall be credited with the amount of the appropriation and charged with all pay warrants issued under the authority of appropriations. Each account shall show the law authorizing the appropriation. The total of all appropriations so credited shall be credited to a control accounts called "appropriations voted." The daily totals of the warrants issued shall be charged to this control account, so that the balance shall represent the amount of unused appropriations. The individual appropriation accounts shall be balanced monthly against the "appropriations voted" account. The heads of all State Departments, Institutions, Boards and Commissions or other officials or employees of the State who are or may be authorized to make purchases or incur any indebtedness to be paid from appropriated funds shall keep accounts for such appropriations as apply to their respective Departments, Institutions, Boards or Commissions, and shall balance such accounts monthly against the like accounts kept by the Comptroller.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

**Art. 4365. Duplicate Warrants**

The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. Provided, however, that any state department, court, school, school district, or other state agency, or federal agency, shall not be required to make bond for the issuance of duplicate warrants. The head of such state agency or federal agency and one other person connected with the handling of warrants for such agency shall be required to make the affidavit for duplicate to issue in case of lost or destroyed warrant belonging to such agency. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 576, ch. 219, § 1.]

**Art. 4366. To Examine and Cancel Warrants**

The State Auditor shall examine the disbursements of the Treasurer at the end of each quarter, and shall, together with the Treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the Treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands.

[Acts 1925, S.B. 84; Acts 1943, 48th Leg., p. 429, ch. 293, § 17.]

**Art. 4366a. Money Received Under Federal Flood Control Law; Disposition**

Sec. 1. The Comptroller of Public Accounts of this state is hereby authorized to receive and receipt for all funds due or payable,

or hereafter to become due or payable, by virtue of the Act of Congress of August 18, 1941, Chapter 377, Section 7, 55 Stat. 650, 33 U.S.C. A., Section 701c-3. All of such funds shall be placed in a separate account entitled "Flood Area School and Road Fund" to the credit of the Comptroller of Public Accounts and shall never become a part of the general funds of the state. The Comptroller shall annually pay over such funds to the school district or districts, county, or other political subdivision, as hereinafter provided, to be expended for school purposes, or on the roads, as contemplated by the Act of Congress.

Sec. 2. It shall be the duty of each school district tax collector, county tax collector, or other person charged with the duty of collecting school taxes or road taxes, the territory of which district, county or other political subdivision is within, or partly within, any flood control district, or flood control area, created or designated under authority of law, to prepare and file with the Comptroller of Public Accounts of this state a report under oath showing the total number of acres of land acquired by the United States for flood control purposes within the boundaries of such school district, county, or other political subdivision; and the tax rate per one hundred dollars of valuation for school purposes and for road purposes levied by such district, county, or other political subdivision for the year in which such report is made.

Sec. 3. On or before the 15th day of September of the year 1945 and each year thereafter, the Comptroller of Public Accounts shall pay to the school district or districts and to the county or other political subdivision collecting road taxes, their proportionate share of funds on deposit in such "Flood Area School and Road Fund" which were produced by leases upon lands acquired by the United States for flood control purposes located within such school district, county or other political subdivision, the pro rata to be allotted to the school districts and to the road taxing entity to be based upon the proportion which their respective tax rates bears to the sum of the two rates. The Comptroller shall add the school district tax rate and the road tax rate together and the school district shall be entitled to receive such a percentage of the "Flood Area School and Road Fund" as their tax rate bears to the sum of the school tax rate and the road tax rate; and the county, or other road taxing entity, shall be entitled to receive its proportionate part of such fund based upon the proportion which its tax rate bears to the sum of the two tax rates. If, during any school year, there shall be on hand in said "Flood Area School and Road Fund" any moneys which may be distributable to any school district, the Comptroller of Public Accounts may in his discretion, upon application of such school district or districts, make a distribution of such funds upon any dates other than those above fixed, as may be determined by him.

[Acts 1945, 49th Leg., p. 387, ch. 250.]

**Art. 4366b. Federal Revenue Sharing Trust Fund**

Sec. 1. There is hereby created for the benefit of the State of Texas a Federal Revenue Sharing Trust Fund to receive cash authorized under the Federal State and Local Fiscal Assistance Act of 1972<sup>1</sup> and any money earned by the use of such cash. Expenditures from this fund are to be authorized by the Legislature of the State of Texas.

Sec. 2. The Federal Revenue Sharing Trust Fund is hereby placed under the administrative control of the Comptroller of Public Accounts of the State. The comptroller shall have the authority to promulgate rules and regulations providing for the availability of cash for use among the departments funded from this Federal Revenue Sharing Trust Fund. Salary and wage related costs for employer contributions to the state retirement programs, to the Federal Old Age and Survivors Insurance Program,<sup>2</sup> and for the unemployment benefit program computed at the maximum contributor rate, are to be applied to salaries and wages paid from the Federal Revenue Sharing Trust Fund and credited to the General Revenue Fund.

Sec. 3. In order to insure that the State of Texas obtains the full benefit of the Federal Revenue Sharing Trust Fund, the Comptroller of Public Accounts of the State of Texas is hereby authorized to invest any cash held in such fund, which is determined to be in excess of cash requirements for current expenditures, in United States Government securities.

[Acts 1973, 63rd Leg., p. 375, ch. 169, eff. Aug. 27, 1973.]

<sup>1</sup> 31 U.S.C.A. § 1221 et seq.

<sup>2</sup> 42 U.S.C.A. § 401 et seq.

**CHAPTER THREE. STATE TREASURER****Article**

- 4367. Election and Term.
- 4368. Bond; Special Bond for Federal Funds.
- 4369. New Bond Required.
- 4370. To Receive Moneys from Comptroller.
- 4371. Money Paid Out, How.
- 4372. To Keep Accounts.
- 4373. Annual Exhibit to Governor.
- 4374. Only Public Moneys to be Kept.
- 4375. Employés.
- 4376. Chief Clerk to Act.
- 4377. Delivery to Successor.
- 4378. Repealed.
- 4379. Money Returned to Counties.
- 4379a. Expired.
- 4379b. Obligations of Municipalities and Political Subdivisions May Be Made Payable at State Treasurer's Office.
- 4380. Deposit Warrant Register.
- 4381. Shall Post Daily Totals.
- 4382. Register of Warrants Issued.
- 4382a. Substitute for Warrants Paid Register.
- 4383. Other Accounts.
- 4384. Outstanding Warrants.
- 4385. General Ledger Accounts.
- 4385a. Unconstitutional.
- 4386. Certain Special Funds Abolished.
- 4386a. State Warrants Payable to United States Post Office; Priority.

**Article**

- 4386b. Special Game and Fish Fund; Transfer from other Funds; Disposition.
- 4386b-1. Parks and Wildlife Department; Revolving Petty Cash Fund.
- 4386b-2. Parks and Wildlife Operating Fund.
- 4386b-3. Funds Mistakenly Deposited in State Treasury by Parks and Wildlife Department; Refund by Warrant.
- 4386c. Special Department of Agriculture Fund.
- 4386d. Youth Development Council Fund.
- 4387. Repealed.
- 4388. Daily Statement from Departments.
- 4388a. Neglect of Duty by Comptroller or Treasurer.
- 4389. Office Fee Book.
- 4390. Cash Balancing Book.
- 4391. Ledger.
- 4392. Bond Book.
- 4393. Securities Register.
- 4393a. Trust Funds.
- 4393b. Suspense and Trust Fund Refund Warrants; Void after Four Years; Transfer of Sums Represented; Subsequent Claims.

**Art. 4367. Election and Term**

At each biennial general election a State Treasurer shall be elected for a term of two years.

[Acts 1925, S.B. 84.]

**Art. 4368. Bond; Special Bond for Federal Funds**

The State Treasurer shall, within twenty (20) days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to and to be approved by the Governor, in the sum of Seventy Thousand Dollars (\$70,000.00) with a good and solvent surety company authorized to do business in this State, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation. In addition to the above the State Treasurer shall make and enter into any special bond as may be required by an Act of Congress or by any Federal department or official to protect any and all Federal funds which shall have been secured or which may hereafter be received by the State of Texas from the Federal Government and deposited with the State Treasurer. Said bond shall be in such sum and conditioned and approved as may be prescribed by the Act of Congress or such department or official aforesaid. Said bond shall be a special bond, and shall be in addition to the official bond hereinabove required, and each of said bonds shall be separate and distinct contracts and obligations, and the liability under each of said bonds shall be separate and distinct obligations. All expense necessary and incident to the execution of such special bond shall be paid as in the Act of Congress may be provided or by appropriation made by the Legislature of Texas for such purposes.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 73, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 105, ch. 54, § 1.]

**Art. 4369. New Bond Required**

The Attorney General, with the Comptroller, shall on the first days of June and December of every year, examine the bond of the Treasurer and make diligent inquiry into the condition of the sureties on said bond; and, if in the opinion of the Attorney General, said bond is not sufficient to secure the State in her rights, then, the Attorney General shall notify said Treasurer in writing of the insufficiency of said bond; and, should said Treasurer fail for the space of twenty days from the date of such notice to furnish a sufficient new bond, the Governor shall forthwith suspend said Treasurer from office. If the Treasurer be so suspended from office the Governor shall appoint some suitable person as Treasurer who shall give bond as required by the provisions of the preceding article. The appointee shall perform the duties of Treasurer until the suspended officer shall give a new bond to be approved by the Governor.

[Acts 1925, S.B. 84.]

**Art. 4370. To Receive Moneys from Comptroller**

The Treasurer shall receive, on the warrants of the Comptroller, all moneys which shall from time to time be paid into the State Treasury, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the Comptroller, and the triplicate given to the person depositing such money.

[Acts 1925, S.B. 84.]

**Art. 4371. Money Paid Out, How**

The Treasurer shall countersign and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller, and no warrant shall be paid by the Treasurer unless presented for payment within two years from the close of the fiscal year in which such warrant was issued, but claims for the payment of such warrants may be presented to the Legislature for appropriations to be made from which such claims may be paid.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4372. To Keep Accounts**

The Treasurer shall keep true accounts of the receipts and expenditures of the public moneys of the Treasury, and close his accounts annually on the 31st day of August, with the proper legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4373. Annual Exhibit to Governor**

In addition to the reports required by the Constitution, the Treasurer shall submit to the Governor on the first Monday of November of

each year, and at such other times as he shall require, an exact statement of the condition and situation of the Treasury, and of the balance of money remaining therein to the credit of the State, with a summary of the receipts and payments of the Treasury during the preceding year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the Legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to do so.

[Acts 1925, S.B. 84.]

**Art. 4374. Only Public Moneys to be Kept**

All moneys received by the Treasurer shall be kept in the safes and vaults of the Treasury; and the Treasurer shall not keep or receive into the building, safes or vaults of the Treasury any money, or the representative of money, belonging to any individual except in cases expressly provided for by law; nor shall said Treasurer appropriate to his own use, or lend, sell or exchange any money, or the representative of money, in his custody or control as such Treasurer.

[Acts 1925, S.B. 84.]

**Art. 4375. Employés**

The Treasurer shall appoint a Chief Clerk who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employés and clerks as may be authorized by law. All such employés, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The cost and expense incident to the execution of the bond of the chief clerk and of the bonds of the respective employés shall be paid by the State by appropriation.

[Acts 1925, S.B. 84.]

**Art. 4376. Chief Clerk to Act**

Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the chief clerk shall sign his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such chief clerk as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself.

[Acts 1925, S.B. 84.]

**Art. 4377. Delivery to Successor**

The Treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the State together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to that office.

[Acts 1925, S.B. 84.]

**Art. 4378. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969****Art. 4379. Money Returned to Counties**

Whenever there is money in the State Treasury for the purpose of paying off any obligation due by any county, city or town, and it is made to appear to the Comptroller by certified copy of the records of the commissioners court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then the Comptroller shall draw a warrant on the State Treasury in favor of such county, city or town, for the amount of money so remaining in the Treasury; and the Treasurer shall pay such money on said warrant of the Comptroller to the Treasurer of such county, city or town, for the benefit of its general fund.

[Acts 1925, S.B. 84.]

**Art. 4379a. Expired Aug. 31, 1939****Art. 4379b. Obligations of Municipalities and Political Subdivisions May Be Made Payable at State Treasurer's Office**

State Treasurer as Ex Officio Treasurer and Fiscal Agent

Sec. 1. Any bond, warrant, or other evidence of indebtedness issued by any municipality or political subdivision of this State, including counties, cities, road, school, water improvement, irrigation, drainage, and navigation districts may at the discretion of the municipality or political subdivision, together with interest thereon, be payable at the office of the State Treasurer of the State of Texas, in the City of Austin, and the State Treasurer is hereby designated as ex officio Treasurer and fiscal agent of said municipality or political subdivision for the purpose of receiving deposit of funds for the payment of such bonds and interest thereon, making payment of said obligation as provided therein and for all purposes herein designated and those necessary or incidental thereto.

Deposit and Disposition of Funds by State Treasurer;  
Warrants of Comptroller of Public Accounts

Sec. 2. The State Treasurer shall deposit all funds coming into his hands as ex officio Treasurer, and on account of his designation as fiscal agent of such municipality or political subdivision, shall keep a separate account for each municipality or political subdivision of any moneys received for the credit of such municipality or political subdivision under the provisions of this Act. All moneys deposited to the credit of such municipality or political

subdivision with the State Treasurer up to August 31, 1941, are hereby appropriated to said respective municipalities and political subdivisions and shall be received, payable, used, and applied by the State Treasurer as fiscal agent and the ex officio Treasurer of said respective municipality and political subdivision, to the payment of interest and principal due on obligations maturing on or prior to said time as may be directed in writing by said respective municipality or political subdivision, and each year thereafter all moneys deposited with the State Treasurer for such purposes and all moneys remaining therein from the previous year shall be received and held by him as fiscal agent and ex officio Treasurer of said municipality or political subdivision and shall be subject to appropriation for the payment of interest and principal from time to time upon any bonds made payable at the office of the State Treasurer in such manner as may be directed by such municipality or political subdivision. As payment of interest and principal becomes due upon any obligation, the Treasurer of said municipality or political subdivision shall remit to the State Treasurer, not later than fifteen (15) days prior to date of maturity all sums due or to become due on any maturity. Upon receipt of such funds by the State Treasurer, he shall request the State Comptroller of Public Accounts to issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin. Such warrants shall state on their face that the proceeds of the same are to be applied by the State Treasurer to the payment of certain specified bonds or interest coupons therein described, giving the names of the municipality or political subdivision of which they were issued, numbers, amounts, and dates of the maturities of the obligations and interest to be paid with instructions to the State Treasurer to return to the Treasurer of such municipality or political subdivision such obligations and interest coupons when the same are paid and the Treasurer of said municipality or political subdivision, upon receipt of same, shall cause to be duly entered a record of such payment and cancellation.

Commission for Receiving and Disbursing Funds

Sec. 3. The State Treasurer shall collect for the use of the State, from said municipality or political subdivision for receiving and disbursing such funds, a commission of one-eighth of one per cent on interest, and one-twentieth of one per cent on principal; provided, however, such exchange or commission on any interest payment date or interest-principal payment date shall never be less than Two Dollars and Fifty Cents (\$2.50). The Treasurer of said municipality or political subdivision shall remit to the State Treasurer as ex officio Treasurer of said municipality or political subdivision, the exchange or commission as herein provided at the time of such remittance for the payment of any maturing obligation or interest thereon. Upon receipt of such exchange or



commission paid by the municipalities or political subdivisions, the State Treasurer shall credit the same to the commissions and exchanges earned, and all commissions and exchanges earned, or so much as necessary, are hereby appropriated to the State Treasurer to be used by him in the administration of the provisions of this Act. Any balance remaining at the end of any fiscal year shall be available for use in the next fiscal year.

**Purpose and Construction of Act**

Sec. 4. It is the general intent of this Act to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities and political subdivisions in the State at the office of the State Treasurer, and this Act shall be broadly construed to carry out such intent and purpose, and any official or officials, or any municipality or political subdivision and the State Treasurer concerned in any way with the administration of the Act, is authorized and directed to perform any and all acts and duties necessary, requisite or appropriate to facilitate and expedite the operation of the Act to the end that such bonds and interest thereon may be promptly paid and the payment thereof clearly evidenced and accounted for.

**Bonds and Coupons Cancelled and Returned; Balance Returned; Statement of Account**

Sec. 5. The State Treasurer shall return to the municipality or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds, all such coupons and bonds as have matured or been retired by purchase, after cancelling the same, together with a statement of the account of such municipality or subdivision, showing the amounts received and placed to its credit, the service charges, and the amount of coupons or bonds retired. At the request of the municipality or political subdivision, the State Treasurer shall remit to said municipality or subdivision of the State any balance remaining in his hands more than two (2) years, for which bonds or coupons have not been presented for payment, and thereafter the municipality or political subdivision shall pay such coupons or bonds when presented. Any municipality or political subdivision shall have the right at any reasonable time to a statement of its account with the State Treasurer.

[Acts 1939, 46th Leg., p. 620; Acts 1953, 53rd Leg., p. 856, ch. 347, § 1.]

**Art. 4380. Deposit Warrant Register**

The Treasurer shall keep a deposit warrant register, designed with columns for State revenue, available school fund, miscellaneous, and such other columns as may be found necessary; all warrants to be entered consecutively and distributed to the proper columns. The deposit warrant register shall be prepared by the Comptroller as a carbon copy of the deposit warrant register kept by him and shall be fur-

nished to the Treasurer together with the deposit warrants for moneys deposited each day. [Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4381. Shall Post Daily Totals**

The State Treasurer shall cause the daily totals of deposit warrants to be posted to the proper fund and control accounts in the general ledger. The Treasurer shall keep a "transit record," in which he shall record the essential details of all cash, checks, money orders, drafts or other items deposited or cashed each day, showing the items deposited in each depository bank or otherwise disposed of. The totals of deposits shall be charged to the accounts of the respective depositories on the books of the Treasury. The Treasurer shall keep a journal in which to enter all journal vouchers or other memoranda of transfers between funds or accounts. Postings shall be made from this journal to the proper accounts on the books of the Treasury.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4382. Register of Warrants Issued**

The Treasurer shall keep registers of warrants issued, one for each class of warrant. The Comptroller shall furnish to the Treasurer lists of warrants issued, which lists shall constitute the Treasurer's registers of warrants issued. The Treasurer shall keep a "Warrants Paid Register." In this register the warrants shall be entered each day when paid, the number and amount of each warrant paid being entered. Warrants may be grouped by classes and separate totals of warrants paid from each class may be shown, as well as the grand total of all warrants paid each day. The Treasurer, on request of the Comptroller, shall furnish to the Comptroller each day a copy of the warrants paid register showing the warrants paid. The Treasurer shall keep a register of warrants cancelled, on which shall be entered the details of all warrants cancelled.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1; Acts 1953, 53rd Leg., p. 714, ch. 277, § 1; Acts 1965, 59th Leg., p. 311, ch. 143, § 1.]

**Art. 4382a. Substitute for Warrants Paid Register**

The State Treasurer may, with the consent of the Comptroller of Public Accounts, substitute a recapitulation of the totals of warrants paid each day for the copy of the warrants paid register which denotes each warrant paid each day, and which is now required by Article 4382.

[Acts 1953, 53rd Leg., p. 715, ch. 278, § 1.]

**Art. 4383. Other Accounts**

He shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which shall be credited the daily totals of the several registers of warrants issued and charged with the

daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants.

[Acts 1925, S.B. 84.]

#### Art. 4384. Outstanding Warrants

Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the Comptroller for his record. With this list the Treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month.

[Acts 1925, S.B. 84.]

#### Art. 4385. General Ledger Accounts

The Treasurer shall charge the daily totals of the general warrants, pension warrants, special warrants and all other classes of warrants to the respective fund and control accounts in the general ledger to which they apply.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

#### Art. 4385a. Unconstitutional

This article, derived from Acts 1943, 48th Leg., p. 469, ch. 313, § 2, authorizing the transfer of the unexpended balance in each of seventeen special funds mentioned, which exceeded an amount equivalent to the receipts deposited to the credit of such special funds during the preceding fiscal year to the General Revenue Fund, was unconstitutional on the ground that the title to the act contained nothing to indicate that the body of the act purported to transfer the special funds mentioned in such section. See *Gulf Ins. Co. v. James*, 143 T. 424, 185 S.W.2d 966.

#### Art. 4386. Certain Special Funds Abolished

All warrants on the State Treasury shall be general warrants, and shall be on an equal basis with each other except that in the event of a question and necessity arising as to the priority of payment of any such warrants, they shall be paid in order of their serial number, such warrants to be numbered at all times in the order of receiving the accounts in the Comptroller's office. This article shall not apply to warrants drawn on the Special Game Fund nor on funds collected for and appropriated to the State Highway Department nor to any special fund created or provided in the State Constitution, nor shall it apply to any special fund consisting of taxes set aside and remitted or donated by the Legislature to any county, city or locality. Such constitutional funds and special tax remitting funds and the warrants against the same shall be handled under present laws.

[Acts 1925, S.B. 84.]

#### Art. 4386a. State Warrants Payable to United States Post Office; Priority

Warrants for the purchase of United States postage stamps and for the payment of postoffice box rents by any board or department of the State Government shall be drawn upon the State Treasurer by the State Comptroller in favor of the United States Postoffice; and the State Treasurer shall pay warrants so issued

out of any funds appropriated for such purposes, irrespective of the serial number of said warrants and irrespective of the priority of the issuance of said warrants, and such warrants shall be endorsed by the postmaster of the United States Postoffice to which they are made payable.

[Acts 1933, 43rd Leg., p. 103, ch. 51.]

#### Art. 4386b. Special Game and Fish Fund; Transfer from other Funds; Disposition

Sec. 1. All moneys now on deposit in the State Treasury to the credit of the Special Game Fund, the Special Fish Propagation and Protection Fund, the Fish and Oyster Fund, the Sand, Shell and Gravel Fund, and the Lake Worth-Eagle Mountain Lake Fund, together with all moneys due and owing to any and all of said Funds, shall be transferred, deposited, and consolidated into a single fund, in the State Treasury, to be known as the Special Game and Fish Fund.

Sec. 2. All moneys collected or received by the Game, Fish and Oyster Commission, after the effective date of this Act, from any source now requiring that such moneys be deposited in the State Treasury to the credit of any of the Funds named in Section 1 of this Act, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund.

Sec. 3. The Special Game and Fish Fund shall be used for the aggregate purposes for which the Special Game Fund, the Special Fish Propagation and Protection Fund, the Fish and Oyster Fund, the Sand, Shell and Gravel Fund, and the Lake Worth-Eagle Mountain Lake Fund is now directed by law to be used.

Sec. 4. All moneys derived from the sale of property purchased out of any of the Funds referred to in Section 1 of this Act, and out of the Special Game and Fish Fund, after cost of advertising for sale has been deducted, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund.

Sec. 5. This Act shall be effective on and after September 1, 1947.

Sec. 6. All expenditures made by said Commission out of Special Game and Fish Fund shall be approved by the Executive Secretary of said Commission, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the Special Game and Fish Fund.

Sec. 7. All laws or parts of laws in conflict with this Act are hereby repealed. It is expressly provided that all of the purposes for which the several Funds named in Section 1 shall be used shall remain in effect and be applied in the aggregate to the Special Game and Fish Fund.

[Acts 1947, 50th Leg., p. 503, ch. 297; Acts 1973, 63rd Leg., p. 38, ch. 26, § 1, eff. April 9, 1973.]

**Art. 4386b-1. Parks and Wildlife Department; Revolving Petty Cash Fund**

Sec. 1. The Parks and Wildlife Department is authorized to establish a "Revolving Petty Cash Fund," the balance of which shall never exceed Twenty-five Hundred Dollars (\$2,500.00), out of existing funds on deposit in the state treasury. The sole purpose of the Petty Cash Fund shall be to make refunds of cash receipts, subject to the approval of the state auditor. The account shall be maintained at all times at a bank in Austin, Texas.

Sec. 2. With the prior approval of the Parks and Wildlife Commission, the executive director may designate a bonded employee of the Parks and Wildlife Department to sign checks drawn on this account. The fund shall be reimbursed by warrants drawn and approved by the comptroller of public accounts out of those funds in the state treasury in which the refunded receipts were originally deposited.

[Acts 1971, 62nd Leg., p. 1039, ch. 207, eff. May 13, 1971.]

**Art. 4386b-2. Parks and Wildlife Operating Fund**

Sec. 1. There is hereby established a fund in the State Treasury to be known as the "Parks and Wildlife Operating Fund." The Parks and Wildlife Commission is authorized to transfer any funds appropriated to the Parks and Wildlife Department by the Legislature for Personal Services, Travel, Consumable Supplies and Materials, Current Operating Expenses and Capital Outlay, as these terms are used in the Comptroller's Object Classification Codes of the General Appropriations Act. All expenditures by the department from this special fund shall be made only for such purposes for which appropriations are made by the General Appropriations Act.

Sec. 2. The Parks and Wildlife Operating Fund shall be used for the purposes specified by law or as hereafterwards authorized by law, and nothing shall be done by any officer or employee of the Parks and Wildlife Department or the Parks and Wildlife Commission to jeopardize or divert the Special Funds or any portion thereof, including any federal aid the department receives or administers.

[Acts 1971, 62nd Leg., p. 2459, ch. 798, eff. June 8, 1971.]

**Art. 4386b-3. Funds Mistakenly Deposited in State Treasury by Parks and Wildlife Department; Refund by Warrant**

Sec. 1. Any funds deposited in the state treasury by the Parks and Wildlife Department, either by mistake of fact or by a mistake of law, shall be refunded by warrant issued against the fund in the state treasury into which such money was deposited. So much of the refunds as are necessary to make the proper correction shall be appropriated by the General Appropriations Act for this purpose.

Sec. 2. The comptroller of public accounts may require written evidence from the execu-

tive director of the Parks and Wildlife Department to indicate the reason for said mistake of fact or law before compliance with the provisions of Section 1 of this Act.

Sec. 3. Nothing in this Act shall apply to any funds which have been deposited pursuant to a written contract or to any funds (now on deposit which are the subject of litigation in any of the courts of the United States or of the State of Texas.

[Acts 1971, 62nd Leg., p. 2460, ch. 799, eff. June 8, 1971.]

**Art. 4386c. Special Department of Agriculture Fund****Consolidation of Funds**

Sec. 1. All moneys now on deposit in the State Treasury to the credit of the Citrus Fruit Inspection Fund, the Pure Bred Cottonseed Inspection Fund, and 2-4-D License Fund, the Herbicide Fund, the Texas Vegetable Certification Fund, the Seed Laboratory Fee Account, the Nursery Inspection Fee Account, the Weights and Measures Fee Account, the Charter Filing Fee Account, the Antifreeze Registration Fee Account, the Insecticide and Fungicide Fee Account, Fees for Milk and Cream Tester Licenses, the State Department of Agriculture Grain and Field Seed Warehouse Inspection Fund, and the Texas Seed Act Fund, together with all moneys owing or due said Funds and Fee Accounts, shall be transferred, deposited, and consolidated into a single Fund, in the State Treasury to be known as the Special Department of Agriculture Fund.

**Deposits to Credit of Fund**

Sec. 2. All moneys collected or received by the Texas Department of Agriculture, after the effective date of this Act, from any source now requiring that such moneys be deposited in the State Treasury to the credit of any of the Funds or Fee Accounts named in Section 1 of this Act, shall be deposited in the State Treasury to the credit of the Special Department of Agriculture Fund.

**Use of Fund**

Sec. 3. The Special Department of Agriculture Fund shall be used for the aggregate purposes for which the Funds and Fee Accounts named in Section 1 are now directed by law to be used.

**Proceeds of Sales**

Sec. 4. All moneys derived from the sale of any property purchased out of any Fund, or Fee Accounts and Funds, referred to in Section 1 of this Act, or out of the Special Department of Agriculture Fund, after cost of advertising for sale has been deducted, shall be deposited in the State Treasury to the credit of the Special Department of Agriculture Fund.

**Effective Date**

Sec. 5. This Act shall be effective September 1, 1953.

## Expenditures; Affidavits; Warrants

Sec. 6. All expenditures made by the Texas Department of Agriculture out of the Special Department of Agriculture Fund shall be verified by affidavit to the Texas Department of Agriculture and on approval of such expenditures by the Commissioner of Agriculture or his designated representative, it shall be the duty of the Comptroller of the State to draw his warrant on the State Treasurer for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the Special Department of Agriculture Fund.

## Repeal; Purposes of Fund

Sec. 7. All laws or parts of laws in conflict with this Act are hereby repealed. It is expressly provided that all of the purposes for which the several Funds and Fee Accounts named in Section 1 shall be applied in the aggregate to the Special Department of Agriculture Fund.

[Acts 1953, 53rd Leg., p. 99, ch. 65; Acts 1955, 54th Leg., p. 539, ch. 168, § 1.]

**Art. 4386d. Youth Development Council Fund**

There is created in the Treasury a special fund to be known as the "Youth Development Council Fund" for the purposes hereinafter provided.

[Acts 1953, 53rd Leg., p. 927, ch. 387, § 1.]

**Art. 4387. Repealed by Acts 1931, 42nd Leg., p. 396, ch. 242, § 2****Art. 4388. Daily Statement from Departments**

The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined, it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the

balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called "refund warrants," and such warrants shall be written and signed by the Comptroller and countersigned by the Treasurer and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them.

[Acts 1925, S.B. 84; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 73, § 3; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4388a. Neglect of Duty by Comptroller or Treasurer**

Any person who shall knowingly and willfully violate any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not less than 30 days nor more than six months, or by both such fine and imprisonment.

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

**Art. 4389. Office Fee Book**

The Treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the Treasury department; which fees shall be deposited in the Treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the Comptroller.

[Acts 1925, S.B. 84.]

**Art. 4390. Cash Balancing Book**

The Treasurer shall keep a book, to be called "cash balancing book," for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. The amount of cash on hand and in depository banks shall also be shown. A copy of the cash balancing sheet shall be furnished to the comptroller each day.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4391. Ledger**

The general ledger kept by the Treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants. The pay warrants issued shall be charged to the several fund accounts from the warrants issued registers in daily totals. The ledger shall also contain control accounts for cash, depository banks, bonds, interest, securities, warrants payable and such other accounts as may be necessary. Postings shall be made to the ledger daily from the deposit warrant register, warrants issued registers, warrants paid register and other supporting records. The ledger shall be balanced daily.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4392. Bond Book**

The Treasurer shall keep a bond book in which to enter all warrants or authorizations to receive or relinquish bonds held by him and belonging to any State fund. The Treasurer shall also keep appropriate ledger accounts showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase, and with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities in the general ledger; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; and also controlling accounts for interest to accrue on such bonds, to be set up at the beginning of each fiscal year, on bonds or other securities owned at that time, for interest to accrue for the fiscal year, and for interest on subsequent purchases during the year to be set up when such bonds or securities are purchased; each of which controlling accounts shall be balanced monthly with the sum of the individual accounts for bonds or securities; which accounts shall be balanced monthly and shall correspond with the like accounts kept by the Comptroller.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4393. Securities Register**

The Treasurer shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and State depository banks, and all other bonds or securities lodged with him under the provisions of the Statutes, the registration of which is not otherwise provided for by law; in which he shall enter the deposit receipts or other authorizations to receive or relinquish such bonds or securities. The receiving and relinquishment of these securities shall be on the authority of the Comptroller. He shall also keep a "securities ledger" in which shall be kept appropriate accounts for all matters for which such deposit receipts or authorizations are issued, which ledger shall be balanced monthly against control account to be kept in the "general ledger" and with like accounts to be kept by the Comptroller.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

**Art. 4393a. Trust Funds**

All moneys and other securities placed in the hands of the State Treasurer in trust for any legal purpose shall be received by the State Treasurer on a deposit receipt issued by the State Comptroller as provided in Article 4354, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 495, Chapter 243,

Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be held in trust by the State Treasurer in like manner as the Departmental Suspense Account is held under Article 4388, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 493, Chapter 242, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be withdrawn by trust and suspense draft in the case of money, and withdrawal authorization in the case of other securities, which instruments shall be issued serially and signed by the State Comptroller. Any and all moneys received in trust, or for any legal purpose for which a state deposit warrant has not or cannot immediately be issued, shall be handled by the Treasurer in the same manner as items deposited in departmental suspense accounts. All moneys and securities now held in trust in the State Treasury shall immediately be transferred to the trust and suspense section of the estate's accounting, and thenceforth transferred, refunded or disposed of according to the provisions of this Act. Adequate registers, ledgers and files shall be maintained by the State Treasurer, and by the State Comptroller, to account for the receiving and disposing of all trust and suspense moneys and other securities, which registers and ledgers shall be known as "Trust and Suspense Record."

Nothing herein shall be construed as amending Section 2 of House Bill No. 684, Chapter 3, Acts of the Regular Session, 46th Legislature; nor as amending Senate Bill No. 89, Chapter 324, Acts of the Regular Session of the 48th Legislature.<sup>1</sup>

[Acts 1945, 49th Leg., p. 294, ch. 212, § 1.]

<sup>1</sup> Article 6674q-1 et seq.

**Art. 4393b. Suspense and Trust Fund Refund Warrants; Void after Four Years; Transfer of Sums Represented; Subsequent Claims**

Sec. 1(a). Warrants issued by the Comptroller of Public Accounts in payment of refunds from any suspense or trust fund in the State Treasury, commonly known as Suspense and Trust Fund Refund Warrants, shall become void unless presented to the State Treasurer for payment within four (4) years from the end of the fiscal year in which the warrant was issued. All such warrants now outstanding and unpaid according to the records of the State Treasurer and issued prior to September 1, 1948, shall be voided as of the effective date of this Act. The sums of money represented by such unpaid warrants that are voided in accordance with the provisions of this Section, shall be transferred by the Comptroller from the various Suspense Funds from which the warrants were originally issued to the General Revenue Fund of this State and shall become a part of that fund. Claims for the payment of such warrants voided under the provisions of this Act may be presented to the Legislature for appropriation to be made from which said warrants may be paid. Nothing in this Act shall affect in any way whatsoever the existing

laws regulating the payment of other types or classes of warrants issued by the Comptroller of Public Accounts.

(b) When the transfers of moneys herein referred to are made, the State Treasurer shall prepare a list of the outstanding warrants representing such transfers, such list to show the name of the payee, the date of the original warrant, the departmental suspense account against which the warrant was originally drawn, the original warrant number and the amount of the original warrant. Such list shall be maintained as a permanent record in the office of the State Treasurer and proper notation shall be made on each entry on this list when and if the Legislature makes appropriation for the refund of the amounts so listed.

Sec. 2. If any word, phrase, clause, section, paragraph, or sentence of this Act shall be declared unconstitutional, it is hereby declared to be the intention of the Legislature that the remainder of such Act shall not be affected thereby and shall remain in full force and effect.

[Acts 1953, 53rd Leg., p. 370, ch. 96.]

#### CHAPTER FOUR. ATTORNEY GENERAL

##### Article

- 4394. Election and Term.
- 4395. To Represent State in Higher Courts.
- 4396. Collection Suits.
- 4397. To Prepare Forms.
- 4398. To Examine Bonds.
- 4399. Whom to Advise.
- 4400. Shall Inspect Accounts.
- 4401. To Attend Sales and Bid in Land.
- 4402. To Execute Deeds.
- 4403. May Sell Such Property.
- 4404. Agent to Bid and Sell.
- 4405. Judgments Against Insolvents.
- 4406. Official Register.
- 4407. Collections.
- 4408. Forfeiture of Charters.
- 4409. Inquiry into Charter Rights.
- 4410. Escheats.
- 4411. No Admission to Prejudice.
- 4412. First Office Assistant.
- 4412a. Charitable Trusts.
- 4413. Biennial Report.
- 4413a. Acceptance or Use of Money to Investigate or Prosecute Matters.

##### Art. 4394. Election and Term

At each biennial general election an Attorney General shall be elected for a term of two years. He shall reside and keep his office in the city of Austin.

[Acts 1925, S.B. 84.]

##### Art. 4395. To Represent State in Higher Courts

The Attorney General shall prosecute and defend all actions in the Supreme Court or the Courts of Civil Appeals in which the State may be interested.

[Acts 1925, S.B. 84.]

##### Art. 4396. Collection Suits

He shall transmit to the proper district or county attorney, with such instructions as he

may deem necessary, any certified account, bond or other demand which the Comptroller has delivered to him for prosecution and suit. He shall require the several district and county attorneys to report to him at the close of the courts of their respective districts and counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money. He shall report to the Comptroller annually, on the last day of October and at such other times as the Comptroller may request, a full and correct statement of the status of all such suits. [Acts 1925, S.B. 84.]

##### Art. 4397. To Prepare Forms

He shall whenever requested by the Comptroller, prepare proper forms for contracts, obligations and other instruments which may be wanted for use of the State.

[Acts 1925, S.B. 84.]

##### Art. 4398. To Examine Bonds

He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify.

[Acts 1925, S.B. 84.]

##### Art. 4399. Whom to Advise

The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions,<sup>1</sup> and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, and county auditors authorized by law, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein.

[Acts 1925, S.B. 84.]

<sup>1</sup>The name "Eleemosynary Institutions" changed to "Texas State Hospitals and Special Schools," see art. 3174a.

##### Art. 4400. Shall Inspect Accounts

He shall at least once a month inspect the accounts of the offices of the State Treasurer

and the Comptroller, of all officers and persons charged with the collection or custody of funds of the State. He shall proceed immediately to institute, or cause to be instituted, against any such officer or person who is in default or arrears, suit for the recovery of funds in his hands. He shall also institute immediately criminal proceedings against whoever has violated the laws by misapplying, or retaining in his hands, funds belonging to the State.

[Acts 1925, S.B. 84.]

#### Art. 4401. To Attend Sales and Bid in Land

If any property shall be sold by virtue of any execution, order or sale issued upon any judgment in favor of the State or sale by virtue of any deed of trust—except executions issued upon judgments in cases of scire facias the agent representing the State by and with the advice and consent of the Attorney General is hereby authorized and required to attend such sales and bid on and buy in for the State said property when it shall be deemed proper to protect the interest of the State in the collection of such judgment and debt. His bid shall not exceed the amount necessary to satisfy said judgment and debt and all costs due thereon.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

#### Art. 4402. To Execute Deeds

In all cases where property is so purchased by the State, the officer selling the same shall execute and deliver to the State a deed to the same, such as is prescribed for individuals in similar cases.

[Acts 1925, S.B. 84.]

#### Art. 4403. May Sell Such Property

The agent or attorney of the State buying for the State such property at such sales shall be authorized by and with the advice and consent of the Attorney General, at any time to sell or otherwise dispose of said property so purchased in the manner acquired and upon such terms and conditions as he may deem most advantageous to the State. If sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment or debt, and all costs accrued thereon, the remainder shall be paid into the State Treasury to the credit of the general revenue. When such sale is made, the Attorney General shall, in the name of the State, execute and deliver to the purchaser a deed of conveyance to said property, which deed shall vest all the rights and title to the same in the purchaser thereof.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

#### Art. 4404. Agent to Bid and Sell

When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the State, the attorney or agent so

representing the county, by and with the advice and consent of the commissioner's court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the State is given in this law in similar cases. When any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same. Whenever the property so bought in for the county is sold, the commissioner's court shall execute and deliver to the purchaser thereof a deed in the name of the county to such property.

[Acts 1925, S.B. 84.]

#### Art. 4405. Judgments Against Insolvents

If the principle and sureties upon any judgment held by the state are insolvent, so that under any existing process of law said judgment or any part thereof cannot be collected, there shall be, and is hereby constituted a Board consisting of one (1) citizen of the state appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, Comptroller and State Treasurer, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to be the best interest of the state, all the right of the state to such judgment; and, if by public sale, the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them to be the best interest of the state, and upon sale shall make a proper assignment of said judgment to the purchaser.

[Acts 1925, S.B. 84; Acts 1963, 58th Leg., p. 1138, ch. 442, § 6.]

#### Art. 4406. Official Register

The Attorney General shall keep in proper books a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the State is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office.

[Acts 1925, S.B. 84.]

#### Art. 4407. Collections

He shall immediately pay into the State Treasury all money received by him for debts due or penalties.

[Acts 1925, S.B. 84.]

#### Art. 4408. Forfeiture of Charters

The Attorney General, unless otherwise expressly directed by law, whenever sufficient cause exists therefor shall seek a judicial forfeiture of the charters of private corporations. He shall at once take steps to seek such forfeiture in any case where satisfactory evidence is laid before him that any corporation receiving State aid has, by the non-performance of its

charter conditions or any violation of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder.

[Acts 1925, S.B. 84.]

#### Art. 4409. Inquiry into Charter Rights

He shall also inquire into the charter rights of all private corporations and, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law.

[Acts 1925, S.B. 84.]

#### Art. 4410. Escheats

The Attorney General shall institute and prosecute, or cause to be instituted and prosecuted, all suits and proceedings necessary to recover for and on behalf of the State all properties, real, personal or mixed, that have escheated or may escheat to the State under the laws of the State.

[Acts 1925, S.B. 84.]

#### Art. 4411. No Admission to Prejudice

No admission, agreement or waiver, made by the Attorney General, in any action or suit in which the State is a party, shall prejudice the rights of the State.

[Acts 1925, S.B. 84.]

#### Art. 4412. First Office Assistant

a. In case of the absence or inability of the Attorney General to act, the first office assistant of the Attorney General shall discharge the duties which devolve by law upon the Attorney General.

b. The Attorney General shall designate one (1) or more assistants who shall attend the meetings of any board or commission upon which the Attorney General served as an ex officio member as of the effective date of this Act when requested to do so by such Board or Commission.

[Acts 1925, S.B. 84; Acts 1963, 58th Leg., p. 1138, ch. 442, § 17.]

#### Art. 4412a. Charitable Trusts

##### Definition

Sec. 1. As used in this Article, the term "charitable trust" includes all gifts and trusts for charitable purposes.

##### Attorney General as Necessary Party to Suits or Proceedings

Sec. 2. For and on behalf of the interests of the general public of this state in such matters, the Attorney General shall be a necessary party to and shall be served with process, as hereinafter provided, in any suit or judicial proceeding, the object of which is:

a. To terminate a charitable trust or to distribute its assets to other than charitable donees, or

b. To depart from the objects of a charitable trust as the same are set forth in the instrument creating the trust, including any proceedings for the application of the doctrine of cy pres, or

c. To construe, nullify or impair the provisions of any instrument, testamentary or otherwise, creating or affecting a charitable trust, or

d. To contest or set aside the probate of an alleged will by the terms of which any money, property or other thing of value is given, devised or bequeathed for charitable purposes.

##### Service of Process

Sec. 3. Process may be served as in other civil suits, or the clerk of the court having jurisdiction, or any interested party, or his attorney, may effect the service of process required by this Article by sending through the United States mail, duly certified or registered, a certified copy of the petition or other instrument by which the suit or proceeding is initiated, to the Attorney General and making and filing in said cause an affidavit reciting the facts of service and attaching thereto the customary postal receipts signed by the Attorney General or any Assistant Attorney General.

##### Judgment Rendered Without Service or Process Upon Attorney General

Sec. 4. A judgment rendered in any suit or judicial proceeding referred to in this Article without service or process upon the Attorney General shall be void and unenforceable. Any such judgment shall be set aside upon motion of the Attorney General filed at any time thereafter.

##### Settlement or Compromise of Disputes Without Intervention of Court

Sec. 5. Any dispute, claim or controversy of a character described in Section 2 of this Article, and affecting a charitable trust may be settled or compromised by agreement, with or without the intervention or approval of a court, provided, however, that no such compromise, settlement agreement, contract, or judgment shall be valid or binding unless the Attorney General is a party thereto and joins therein. The Attorney General is expressly authorized to join and enter into such compromises, settlement agreements, contracts, and judgments, as aforesaid, as in his judgment and discretion may be in the best interests of the public.

##### Purpose of Article

Sec. 6. It is the purpose of this Article to resolve and clarify what is thought by some to be uncertainties existing at common law with respect to the subject matter hereof. Nothing contained herein, however, shall ever be construed, deemed or held to be in limitation of the common law powers and duties of the Attorney General.

[Acts 1959, 56th Leg., p. 203, ch. 115.]



**Art. 4413. Biennial Report**

The Attorney General shall report to the Governor biennially on the first Monday in December next preceding the expiration of his official term the number of indictments which have been found by grand juries in this State for the two preceding years; the offenses charged, the number of trials, convictions and acquittals for each offense; the number of dismissals and also a summary of the judgments rendered on conviction, the nature and amount of penalties imposed and the amount of fines collected. This report shall also give a general summary of all the business, civil and criminal, disposed of by the Supreme Court and Court of Criminal Appeals, so far as the State may be a party, and all civil causes to which the State is a party prosecuted or defended by him in any other courts, State or Federal.

[Acts 1925, S.B. 84.]

**Art. 4413a. Acceptance or Use of Money to Investigate or Prosecute Matters**

From and after the effective date of this Act, the Attorney General shall not accept or use any money offered by any person, firm, partnership, corporation or association, for the purpose of investigating or prosecuting any matter whatsoever.

[Acts 1963, 58th Leg., p. 732, ch. 270, § 1.]

**CHAPTER FOUR-A. STATE AUDITOR****Article**

- 4413a-1 to 4413a-7. Repealed.
- 4413a-7a. Administrative Services Division.
- 4413a-7b. River Authorities' Records.
- 4413a-8. Legislative Audit Committee.
- 4413a-9. State Auditor; Appointment by Committee; Term.
- 4413a-10. Qualifications of State Auditor.
- 4413a-11. Written Appointment; Oath; Bond; Vacancies.
- 4413a-12. Approval of Appointment by Senate.
- 4413a-13. Powers and Duties of State Auditor in General.
- 4413a-14. Examination of State Departments; Reports; Recommendations.
- 4413a-15. Files to be Kept by State Auditor.
- 4413a-16. Improper Practices; Illegal Transactions; Reports; Hearings; Removal or Replacement.
- 4413a-17. Office of State Auditor; Compensation of Auditor and Assistants; Traveling Expenses; Duties of First Assistant.
- 4413a-18. Personnel; Suggested Appointments Forbidden.
- 4413a-19. Removal or Discharge.
- 4413a-20. State Auditor not to Serve in Other Capacities.
- 4413a-21. Texas Department of Corrections, Auditing.
- 4413a-22. Definitions.
- 4413a-23. Partial Invalidity.
- 4413a-24. Refusal to Permit or Interference with Examination of Records; Failure to Make Report; Penalty.

**Arts. 4413a-1 to 4413a-7. Repealed by Acts 1943, 48th Leg., p. 429, ch. 293, § 1**

The repealed articles were derived from Acts 1929, 41st Leg., 1st C.S., p. 222, ch. 91, §§ 1 to 7, and related to the appointment, qualifications, duties, reports, assistants, and compensation and removal of the state auditor. These subjects are now covered in articles 4413a-8 to 4413a-24.

**Art. 4413a-7a. Administrative Services Division**

(a) The State Auditor shall establish within his office a division to be known as the Administrative Services Division.

(b) The Administrative Services Division shall advise and assist all state agencies in the improvement of procedures relating to:

- (1) processing of incoming and outgoing mail;
- (2) records management;
- (3) microimage recording;
- (4) information retrieval systems;
- (5) supply storage management;
- (6) offset reproduction;
- (7) document copying; and
- (8) other management problems with respect to which the State Auditor believes the state agencies need assistance or advice.

[Acts 1969, 61st Leg., p. 1980, ch. 672, § 1, eff. Sept. 1, 1969.]

**Art. 4413a-7b. River Authorities' Records**

The State Auditor shall audit the accounts, books, and other financial records of all the river authorities in the state in the manner provided in this Act for audit of the State Government and shall perform all duties and functions in connection with this audit which are provided in this Act.

[Acts 1971, 62nd Leg., p. 2458, ch. 797, § 1, eff. June 8, 1971.]

**Art. 4413a-8. Legislative Audit Committee**

There is hereby created a Legislative Audit Committee, which shall be composed of the Speaker of the House of Representatives, the Chairman of the Appropriations Committee of the House of Representatives, the Chairman of the Revenue and Taxation Committee of the House of Representatives, the Lieutenant-Governor, the Chairman of the Finance Committee of the Senate and the Chairman of the Committee on State Affairs of the Senate. In the absence of any such Chairman, the Vice-Chairman of such Committee shall act. The members of said Committee shall receive no compensation for the services performed under the provisions of this Act,<sup>1</sup> but each shall receive his actual and necessary expenses incurred in the discharge of his duties as such member. The Committee shall employ such clerical assistants as it may need within the limits of the appropriations made for such purpose.

The Committee, within ten (10) days from the passage of this Act, shall meet and organize by electing one (1) member of said Committee, Chairman; and another member of said Committee, Secretary. In voting on any question which this Act requires the Legislative Audit Committee to decide, if the full Committee is present and there is a tie vote, and the Committee cannot secure, within a reasonable time, a majority vote either for or against the

proposition under consideration, then the Committee shall agree on a seventh member, selected from the membership of either the House or the Senate, and the member so selected shall meet with the Committee and shall vote on the proposition under consideration. When he has voted and the proposition has been decided, his duties as a member of such Committee shall end.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 2.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

#### Art. 4413a-9. State Auditor; Appointment by Committee; Term

Such Committee, or the majority of the membership thereof, shall appoint an investigator of all custodians of public funds, disbursing agents, and personnel of departments, the title of such officer to be State Auditor. The appointment shall be made during the period from February 1st to February 15th of each odd numbered year, and the person so appointed State Auditor shall hold the office until his successor is appointed and qualifies; provided, however, that within ten (10) days of the effective date of this Act,<sup>1</sup> or as soon thereafter as practicable, such Committee shall appoint an Auditor for the period expiring February 15, 1945. Such Auditor shall be a Certified Public Accountant of Texas.

[Acts 1943, 48th Leg., p. 529, ch. 293, § 3.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

#### Art. 4413a-10. Qualifications of State Auditor

The person appointed State Auditor shall have had at least five (5) years experience as a Certified Public Accountant immediately preceding his appointment, and he shall be a man of unquestioned integrity and moral character and who has had sufficient experience in business and finance to properly discharge the functions of the office. He shall have been a citizen and resident of Texas for at least five (5) years immediately preceding his appointment. He shall qualify by taking the Constitutional oath of office and executing a bond to be approved by the appointing power, payable to the Governor of the State of Texas and his successors in office, in the sum of Twenty-five Thousand (\$25,000.00) Dollars, conditioned upon the faithful discharge of the duties of his office, with a solvent surety company as surety. The premium due the surety company for the execution of such bond shall be paid by the state.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 4.]

#### Art. 4413a-11. Written Appointment; Oath; Bond; Vacancies

The Legislative Audit Committee, or a majority of the membership thereof, shall execute a written appointment of the person so appointed as such State Auditor and cause the same to be filed in the office of the Secretary of State. The person so appointed to such office, within ten (10) days after his appointment, shall file in the office of the Secretary of State his oath

and approved bond; and if he shall fail to do so, the Committee, or a majority of the membership thereof, shall appoint some other qualified person to fill such office. All vacancies in the office of State Auditor shall be filled by the Committee or a majority of the membership thereof.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 5.]

#### Art. 4413a-12. Approval of Appointment by Senate

The appointment of the State Auditor shall be by the Legislative Audit Committee immediately certified to the Senate, if the same be in session, and if it not be then in session it shall be certified within ten (10) days after said Senate shall be officially convened for any purpose; and if, after consideration by the Senate, the person so appointed and certified shall not receive the approval of two-thirds ( $\frac{2}{3}$ ) of the members of the Senate, he shall not be considered as approved, and the Legislative Committee shall at once proceed to the selection of another for such position.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 6.]

#### Art. 4413a-13. Powers and Duties of State Auditor in General

The State Auditor is hereby granted the authority and it shall be his duty:

1. To perform an audit of all accounts, books and other financial records of the State Government of any officer of the state, department, board, bureau, institution, commission or agency thereof, and to prepare a written report or reports of such audit or audits to the Legislative Audit Committee and such other person or persons hereafter designated in this bill.

2. To personally, or by his duly authorized assistants, examine and audit all fiscal books, records and accounts of all custodians of public funds, and of all disbursing officers of this state, making independent verifications of all assets, liabilities, revenues and expenditures of the state, its departments, boards, bureaus, institutions, commissions or agencies thereof now in existence or hereafter created.

3. To require such changes in the accounting system or systems and record or records of any office, department, board, bureau, institution, commission or state agency, that in his opinion will augment or provide a uniform, adequate, and efficient system of records and accounting.

4. To work with the executive officers of any and all state offices, departments, boards, bureaus, institutions, commissions or agencies thereof hereafter created, in outlining and installing a uniform, adequate and efficient system of records and accounting.

5. To require the aid and assistance of all executives and officials, auditors, accountants and other employees of each and every department, board, bureau, institu-

tion, commission or agency of the state at all times in the inspection, examination and audit of any and all books, accounts and records of the several departments.

The State Auditor shall have access at all times to all of the books, accounts, reports, confidential or otherwise, vouchers, or other records of information in any state office, department, board, bureau, or institution of this state.

In making any changes, the State Auditor shall take into consideration the present system of such books, records, accounts and reports in order that the transition may be gradual. The past and present records shall be co-ordinated into the new system. It is the object and purpose of this Act,<sup>1</sup> among other things, to install a unified and co-ordinated system of accounting and records in every department, bureau, board and institution of the State Government.

The State Auditor shall also perform such other duties as may be required of the State Auditor or State Auditor and Efficiency Expert by any other existing law or laws of this State.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 7.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

#### Art. 4413a-14. Examination of State Departments; Reports; Recommendations

In addition to the other duties provided for the State Auditor, he shall thoroughly examine all departments of the State Government with special regard to their activities and the duplication of efforts between departments and the quality of service being rendered by subordinate employees in each of the several departments.

Upon completing the examination of any department, he shall furnish the head thereof with a report of, among other things,

- (a) the efficiency of the subordinate employees;
- (b) the status and condition of all public funds in charge of such department;
- (c) the amount of duplication between work done by the departments so examined and other departments of the State Government;
- (d) the expense of operating the department;
- (e) breaches of trust and duty, if any, by an officer, department, institution, board, bureau, or other custodian or disbursement officer of public funds;
- (f) any suggested changes looking toward economy and reduction of number of clerical and other employees, and the elimination of duplication and inefficiency.

Copies of each report shall be filed with the Governor, the Lieutenant-Governor, the Speaker of the House of Representatives, the Secretary of State, and each member of the Legislature.

The State Auditor shall file an annual report with the Governor; copies of such report shall be filed with the Speaker of the House, the Lieutenant-Governor, and in the office of the Secretary of State. Such annual report shall contain, among other things, copies of, or the substance of reports made to the various departments, bureaus, institutions, and boards, as well as a summary of changes made in the system of accounts and records thereof.

Reports shall also contain specific recommendations to the Legislature for the amendment of existing laws or the passage of new laws designed to improve the functioning of various departments, boards, bureaus, institutions or agencies of State Government to the end that more efficient service may be rendered and the cost of government reduced.

All recommendations submitted by the State Auditor shall be confined to those matters properly coming within his jurisdiction, which is to see that the laws passed by the Legislature dealing with the expenditure of public moneys are in all respects carefully observed, and that the attention of the Legislature is directed to all cases of violation of the law and to those instances where there is need for change of existing laws or the passage of new laws to secure the efficient spending of public funds. The State Auditor shall not include in his recommendations to the Legislature any recommendations as to the sources from which taxes shall be raised to meet the governmental expense.

All reports by the State Auditor shall call attention to any funds, which, in his opinion, have not been expended in accordance with law or appropriations by the Legislature; and shall make recommendations to the Legislature as to the manner or form of appropriations, which will avoid any such improper expenditure of money in the future.

Each of the audits herein provided for shall be made and concluded as directed by the Legislative Audit Committee, and in accordance with the terms of this Act;<sup>1</sup> but shall be concluded and reports thereof made not later than thirty (30) days before the convening of each Regular Session of the Legislature. The Committee shall direct the Auditor to make any special audit or investigation that in its judgment is proper or necessary to carry out the purpose of this Act, or to assist the Legislature in the proper discharge of its duties.

The Committee shall direct the printing or mimeographing of such number of any reports as it thinks necessary and proper.

All reports filed by the Secretary of State shall be open to public inspection.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

#### Art. 4413a-15. Files to be Kept by State Auditor

The State Auditor shall keep, or cause to be kept, a complete, accurate and adequate set of fiscal transactions of the State Auditor's of-

office. He shall also keep a complete file of copies of all audit reports, examinations, investigations, and any and all other reports or releases issued by him or his office, and a complete file of audit work papers and other evidences pertaining to work of the office of State Auditor.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 9.]

**Art. 4413a-16. Improper Practices; Illegal Transactions; Reports; Hearings; Removal or Replacement**

If the State Auditor finds, in the course of his audit, evidence of improper practices of financial administration or of any general incompetency of personnel, inadequacy of fiscal records, he shall report same immediately to the Governor, the Legislative Audit Committee, and the Department head or heads affected. If the State Auditor shall find evidence of illegal transactions, he shall forthwith report such transactions to the Governor, the Legislative Audit Committee and the Attorney General.

Immediately upon receipt of a report from the State Auditor of incompetency of personnel and inadequacy of fiscal records, the Legislative Audit Committee shall review the State Auditor's report of same and hold hearings with the Department head or heads concerning such incompetency and inadequacy of fiscal records. The Legislative Audit Committee, after holding such hearings, shall make a report to the Department head or heads requesting the removal or replacement of the incompetent personnel or the installation of the necessary fiscal records. The Legislative Audit Committee shall report to the Legislature any refusal of the Department officials to remedy such incompetency or the installation of proper fiscal records.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 10.]

**Art. 4413a-17. Office of State Auditor; Compensation of Auditor and Assistants; Traveling Expenses; Duties of First Assistant**

The State Auditor shall devote his entire time to the discharge of the duties herein imposed upon him; shall maintain his office in the Capitol; and the Board of Control is directed to furnish suitable quarters, supplies and stationery for him and his assistants and employees. The State Auditor shall receive for his services compensation at the rate of Seven Thousand Five Hundred (\$7,500.00) Dollars per annum until September 1, 1945, and thereafter such sum as may be provided in the biennial appropriation bill, together with the necessary traveling expense, payable monthly in the manner as other state officers are paid. All vouchers issued in the payment of salary and expenses to the State Auditor shall be approved by the Chairman of the Legislative Audit Committee before they are paid; and all vouchers issued for the payment of salaries of assistant auditors and for stenographic and

clerical help, as well as all vouchers issued in the payment of other expenses incurred in the operation of the office of the State Auditor, shall be approved by the State Auditor before they are paid. Traveling expenses for all employees in the State Auditor's office, when engaged on official business, shall be paid to the extent authorized in the appropriation bill for the State Auditor's office. All sums appropriated to the State Auditor for that department shall be expended under the direction and subject to the control of the Legislative Audit Committee. Salaries shall be paid monthly. The salary of no assistant auditor shall exceed the sum of Four Thousand Two Hundred (\$4,200.00) Dollars per annum, except the First Assistant, whose salary shall not exceed Six Thousand (\$6,000.00) Dollars per annum. The First Assistant State Auditor shall perform such duties and assignments as the State Auditor may prescribe, and shall act as State Auditor in the absence of the State Auditor. All such assistant auditors and stenographic and clerical assistants shall be named and appointed by the State Auditor. The salaries paid shall in no event exceed the amounts paid in other departments for similar services.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 11.]

**Art. 4413a-18. Personnel; Suggested Appointments Forbidden**

The State Auditor shall be free to select the most efficient personnel available for each and every position in his office, to the end that he may render to the members of the Legislature that service which they have a right to expect. It is the intention and desire of the Legislature to free the State Auditor and his staff from partisan politics; and it is hereby declared to be against public policy, and unlawful, for any member of the Legislature or any official or employee of the State Government or any board, bureau, department or institution thereof to recommend or suggest the appointment of any person to a position on the staff of the State Auditor. The State Auditor is hereby authorized to conduct such professional examinations as he may deem expedient in determining the qualifications of the persons whom he contemplates placing on his staff.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 12.]

**Art. 4413a-19. Removal or Discharge**

The State Auditor may be removed or discharged at any time by the Legislative Audit Committee, or a majority of the members thereof, for any reason satisfactory to said Committee or a majority thereof, and without a hearing, and such office or position filled by appointment, the same as though a vacancy existed in such office. The State Auditor may remove or discharge any assistant auditor or any stenographic or clerical assistants at any time and for any reason satisfactory to himself and without a hearing.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 13.]

**Art. 4413a-20. State Auditor not to Serve in Other Capacities**

The State Auditor shall not serve in any ex-officio capacity, on any administrative board or commission, or have any financial interest in the transactions of any department, board, bureau, institution, commission or agency of the state.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 15.]

**Art. 4413a-21. Texas Department of Corrections, Auditing**

The provisions of Section 18 of Chapter 212 of House Bill No. 59, Acts of the Regular Session of the 40th Legislature,<sup>1</sup> shall in no way relieve the State Auditor from the duties and responsibilities of auditing the Texas Prison System<sup>2</sup> the same as every other department, board, bureau or institution of this state.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 16.]

<sup>1</sup> Article 6166q (now repealed).

<sup>2</sup> Name changed to Texas Department of Corrections. See art. 6166a-1.

**Art. 4413a-22. Definitions**

Wherever the word "department", "board", "bureau", "institution", "commission", or other word or words of similar import appear in any prior Section of this Act,<sup>1</sup> such shall mean each and every department, board, bureau, institution, commission or agency of the State Government.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 18.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

**Art. 4413a-23. Partial Invalidity**

If any part or parts of this Act<sup>1</sup> shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such invalid part or parts thereof would be so declared unconstitutional.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 19.]

<sup>1</sup> Articles 4366, 4413a-8 to 4413a-24.

**Art. 4413a-24. Refusal to Permit or Interference with Examination of Records; Failure to Make Report; Penalty**

Any officer or person employed by the State of Texas or any governmental unit of the state who shall refuse to permit the examination or access to the books, accounts, reports, vouchers, papers, documents or cash drawer or cash of his office, department, institution, board, or bureau by the State Auditor, or who shall in any way interfere with such examination, or who shall refuse to make any report required by this Act,<sup>1</sup> shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not less than one (1) month nor more than twelve (12) months, or by both such fine and imprisonment.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 14.]

<sup>1</sup> This article and arts. 4366, 4413a-8 to 4413a-23.

**CHAPTER FOUR-B. INTERSTATE COOPERATION****Art. 4413b-1. Commission Established; Composition; Functions; Governor's Committee****Governor's Committee**

Sec. 1. There is hereby established a committee to be officially known as the Governor's Committee on Interstate Co-operation, and to consist of six (6) members. Its members shall be: the Secretary of State, ex officio; the Attorney General, ex officio; one (1) citizen of the state, appointed by the Lieutenant Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years; one (1) citizen of the state appointed by the Speaker of the House of Representatives with the advice and consent of the Senate, who shall serve for a term of two (2) years; and two (2) other administrative officials or members of existing Commissions to be designated by the Governor. The Governor shall appoint one (1) of the six (6) members of this Committee as its chairman. In addition to the regular members, the Governor shall be an ex officio honorary non-voting member of this Committee.

**Establishment and Membership of Commission**

Sec. 2. There is hereby established the Texas Commission on Interstate Cooperation. This Commission shall be composed of nineteen (19) regular members, namely:

The Governor, the Lieutenant Governor and the Speaker of the House of Representatives;

Five members of the Senate to be appointed by the Lieutenant Governor;

Five members of the House of Representatives to be appointed by the Speaker of the House of Representatives;

The six members of the Governor's Committee on Interstate Cooperation.

The Governor shall serve as Chairman of the Commission and the Lieutenant Governor and the Speaker of the House shall serve as First Vice-Chairman and Second Vice-Chairman respectively.

The service of all members shall be ex-officio and in addition to the other duties prescribed by law for their offices.

**Functions of Members**

Sec. 3. The said appointed members of the Senate and the said appointed members of the House of Representatives shall function during the Regular Session of the Legislature and also during the interim periods between such sessions; these members shall serve until their successors are designated; and they shall respectively constitute for this State the Senate Council and House Council of the American Legislators' Association. The incumbency of each member of the Governor's Committee shall extend until his successor is appointed.

## Functions of Commission

Sec. 4. It shall be the function of this Commission:

(1) To carry forward the participation of this State as a member of the Council of State Governments;

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other States, of the Federal Government, and of local units of government;

(3) To endeavor to advance cooperation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating

(a) The adoption of compacts;

(b) The enactment of uniform or reciprocal statutes;

(c) The adoption of uniform or reciprocal administrative rules and regulations;

(d) The informal cooperation of governmental offices with one another;

(e) The personal cooperation of governmental officials and employees with one another, individually;

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose.

## Intergovernmental Problems; Personnel; Expenditures

Sec. 4a. In addition to its other duties and functions, the Commission is authorized to study intergovernmental problems and make recommendations with respect thereto and to cooperate with other Texas agencies and the agencies of other States concerned with such problems.

The Commission shall employ necessary personnel, execute necessary contracts, pay for actual travel expenses, printing, supplies and other necessary expenses in accomplishing the above purposes. It is expressly provided that the Governor or any other State Officer or Agency may allocate to the use of said Texas Commission on Interstate Cooperation any portion of any legislative appropriation which, by the terms thereof, may be expended for the accomplishment of any one (1) or more of the purposes set forth in Chapter 569, Acts of the Regular Session of the Forty-seventh Legislature, being Article 4413b-1, Vernon's Annotated Statutes.

## Delegations and Committees; Establishment by Commission; Duties

Sec. 5. The Commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the Commission in obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the Chairman of the Commission. State officials or employees who are not members of the Commission on Interstate Cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental positions in this State shall not be eligible. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

## Report to Governor and Legislature; No Compensation

Sec. 6. The Commission shall report to the Governor and to the Legislature within fifteen (15) days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service.

## Names of Committees and Commission

Sec. 7. The Committees and the Commission established by this Act shall be informally known, respectively, as the Senate Cooperation Committee, the House Cooperation Committee, the Governor's Cooperation Committee and the Texas Cooperation Commission.

## Joint Governmental Agency

Sec. 8. The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which cooperate through it.

## Fund to be Appropriated by Legislature

Sec. 9. It is contemplated that a fund will be appropriated by the Legislature for the purpose of enabling the Commission, by contribution to the Council of State Governments, to participate with other states in maintaining the said Council's District and central secretariats and its other governmental services. Out of any such fund appropriated, also, the members of the Commission and the members of all delegations and committees which it establishes shall be paid their necessary expenses in carrying out their obligations under this Act.

## Partial Invalidity

Sec. 10. If any clause or other portion of this Act is held to be invalid, that decision

shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that all such remaining portions of this Act are severable, and that it would have enacted such remaining portions if the invalid portions had not been included in this Act.

[Acts 1941, 47th Leg., p. 1109, ch. 569; Acts 1949, 51st Leg., p. 1106, ch. 565, §§ 1, 2; Acts 1963, 58th Leg., p. 1138, ch. 442, § 9; Acts 1973, 63rd Leg., pp. 755, 756, ch. 330, §§ 1, 2, eff. June 12, 1973.]

#### CHAPTER FOUR-C. SOUTHERN INTER-STATE NUCLEAR COMPACT

##### Art. 4413c-1. Southern Interstate Nuclear Compact

###### Enactment and Terms of Compact

Sec. 1. The Southern Interstate Nuclear Compact is hereby enacted into law and entered into by this state with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

#### SOUTHERN INTERSTATE NUCLEAR COMPACT

##### ARTICLE I. POLICY AND PURPOSE

The party states recognize that the proper employment of nuclear energy, facilities, materials, and products can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from and acquisition of nuclear resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and the framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the region's people.

##### ARTICLE II. THE BOARD

(a) There is hereby created an agency of the party states to be known as the "Southern Interstate Nuclear Board" (hereinafter called the Board). The Board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provision therefore. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The Board members of the party states shall be entitled to one vote on the Board. No

action of the Board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the Board are cast in favor thereof.

(c) The Board shall have a seal.

(d) The Board shall elect annually, from among its members, a Chairman, a Vice-Chairman, and a Treasurer. The Board shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Board may require.

(e) The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Board may borrow, accept, or contract for the services of personnel from any state of the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state of the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer of each of the party states.

(k) The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

#### ARTICLE III. FINANCES

(a) The Board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of this jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial Federal Census; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the Federal Census-Taking Agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II (h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II (h) hereof, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the Board in attending Board meetings shall be met by the Board.

(e) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

(f) The accounts of the Board shall be open at any reasonable time for inspection.

#### ARTICLE IV. ADVISORY COMMITTEES

The Board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

#### ARTICLE V. POWERS

The Board shall have power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to nuclear and related industries.

(b) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(c) Collect, correlate, and disseminate information relating to civilian uses of nuclear energy, materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of:

(1) Nuclear industry, medicine, or education or the promotion or regulation thereof.

(2) The formulation or administration of measures designed to promote safety in any manner related to the development, use or disposal of nuclear energy, materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of nuclear product, material, or equipment use and disposal and of proper techniques or procedures for the application of nuclear resources to the civilian economy or general welfare.

(f) Undertake such non-regulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.



(i) Prepare, publish and distribute, (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the Atomic Energy Commission or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

#### ARTICLE VI. SUPPLEMENTARY AGREEMENTS

(a) To the extent that the Board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty as-

sumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

#### ARTICLE VII. OTHER LAWS AND RELATIONSHIPS

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the Board own or operate any facility or installation for industrial or commercial purposes.

#### ARTICLE VIII. ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

#### ARTICLE IX. SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the ap-

plicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

**Member of Board; Appointment; Term; Deputy**

Sec. 2. The Governor shall appoint one member of the Southern Interstate Nuclear Board as established by Article II of the compact. Said member shall serve at the pleasure of the Governor. If said member of the Board shall be the head of a regularly constituted department or agency of this state, he may designate a subordinate officer or employee of his department or agency to serve in his stead as permitted by Article II(a) of the compact and in conformity with any applicable bylaws of the Board.

**Coordination of Atomic Activities; Atomic Energy Advisory Committee**

Sec. 3. (a) The member of the Board appointed and serving in accordance with Section 2 of this Act shall assist in the coordination of atomic activities within this state.

(b) The Governor may appoint an Atomic Energy Advisory Committee to consult and advise in the coordination of atomic activities. Said Committee shall consist of not to exceed fifteen (15) persons; two of whom shall be members of the Senate; two of whom shall be members of the House of Representatives; and the remaining members of which shall be chosen from among citizens of this state whose public or private positions, training and experience give them knowledge of and competence in fields related to the development and use of atomic energy, materials or products.

(c) The Board member is hereby authorized and empowered to assist in the orderly development of atomic knowledge within the State of Texas.

**Budgets of Estimated Expenditures**

Sec. 4. Pursuant to Article III(a) of the compact, the Board shall submit its budgets of estimated expenditures to the Governor and Legislative Budget Board for presentation to the Legislature.

**Additional Funds; Supplementary Agreements**

Sec. 5. Any supplementary agreement entered into pursuant to Article VI of the compact and requiring the expenditure of funds or the assumption of an obligation to expend funds in addition to those already appropriated

shall not become effective as to this state prior to the making of an appropriation by the Legislature therefor.

**Cooperation of State Departments, Agencies and Officers**

Sec. 6. The departments, agencies and officers of this state and its subdivisions are hereby authorized to cooperate with the Southern Interstate Nuclear Board in the furtherance of any of its activities pursuant to the compact.

[Acts 1961, 57th Leg., p. 93, ch. 54.]

**CHAPTER FOUR-D. STATE-FEDERAL RELATIONS**

**Article**

- 4413d-1. Division of State-Federal Relations.
- 4413d-2. Coordinating Relationships Between Local Governmental Units and Federal Agencies.
- 4413d-3. Contracts with Federal Government for Eradication of Noxious Vegetation from State Waters.

**Art. 4413d-1. Division of State-Federal Relations**

**Establishment**

Sec. 1. There is established the Office of State-Federal Relations.

**Director**

Sec. 2. The Governor shall appoint a Director of the Office of State-Federal Relations with the advice and consent of the Senate. The director shall serve at the pleasure of the Governor. The director shall remain in office until a successor is appointed and has been duly qualified.

**Location**

Sec. 3. The director may maintain office space for carrying out the powers and functions assigned to him by this Act inside and outside the State at such places as he may direct.

**Staff**

Sec. 4. The director may employ such staff as is necessary to carry out the powers and functions assigned to him by this Act.

**Compensation**

Sec. 5. The director and staff are entitled to the compensation and transportation allowances provided for in the General Appropriations Acts. The Director of the Office of State-Federal Relations may also receive up to \$25.00 per diem allowance in addition to the regular compensation and transportation allowances as may be provided for by the Legislature in the General Appropriations Acts.

**Powers and Functions**

Sec. 6. The powers and functions of the director shall enable him to act as liaison from the State to the Federal government.

1. The director shall help coordinate State and Federal programs dealing with the same matter.

2. The director will inform the Governor and the Legislature of the existence of Federal programs which will be or may be carried out in the State, or which affect State programs.

3. The director will provide Federal agencies and the Congress with information about State policy and about conditions in the State, on matters about which the Federal Government is concerned.

4. The director will provide the Legislature with information useful to it in measuring the effect of Federal programs on State and Local programs.

5. The director shall make an annual report of its operations and recommendations and shall supply the Governor and all members of the Legislature with a copy thereof.

Legislative Information

Sec. 7. The Legislature may establish interim committees to work with and receive information from the director and develop and recommend legislation the committees think would be beneficial.

[Acts 1965, 59th Leg., p. 687, ch. 326; Acts 1971, 62nd Leg., p. 1733, c. 504, §§ 1 to 6, eff. Aug. 30, 1971.]

Art. 4413d-2. Coordinating Relationships Between Local Governmental Units and Federal Agencies

Declaration of Public Policy

Sec. 1. The Legislature finds that the federal government has established and continues to establish grant programs of direct assistance to cities, counties, school districts, hospital districts and other political subdivisions of the state and political subdivisions of the county, and that, due to the large number of such local governmental agencies in this state and that the lack of coincidence of service needs and taxing power within such local jurisdictions, it is frequently difficult for local government to marshal the technical and financial resources needed to meet the needs of its residents. For the state to assume its proper responsibility and leadership in meeting the needs of its residents, the declared policy of the state is to render technical assistance and to assume responsibility for coordinating relationships between local governmental units governed by this Act and federal agencies with regard to such programs.

Duty of Governor to Coordinate Actions of Political Subdivisions; Rules and Regulations

Sec. 2. Except where a single state agency is otherwise designated or established pursuant to any other law of this state, it shall be the duty of the Governor of the State of Texas or any state agency designated by the governor for such purpose to coordinate the actions of any city, county, school district, hospital district or any other political subdivision of the state or political subdivision of the county participating in any grant program established

pursuant to an Act of Congress or administrative ruling pursuant thereto. Such coordination shall be established under such rules and regulations as the governor or the state agency designated for such purpose shall promulgate. Such rules and regulations shall be approved by the Attorney General of Texas and filed with the secretary of state.

Requesting Governor or State Agency to Stand in Place of Political Subdivision; Revocation of Request

Sec. 3. Any city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county may in the discretion of the governing body of such city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county by order or resolution request the governor or the state agency established for such purpose to stand in the place and stead of such city, county, school district, hospital district or political subdivision of the state or political subdivision of the county in any matter pertaining to requests for financial assistance, either grants or loans, as to any agreement or assurance of compliance or requirement in connection therewith and as to any enforcement action relating thereto, which may be designated in such request. The governing body of any city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county which has requested the governor or the state agency designated by the governor for such purpose to stand in its place and stead may by order or resolution revoke such request under any authority delegated thereby to the governor or the state agency established for such purpose.

Applications for Federal Grants Submitted to Governor or State Agency; Approval or Disapproval of Grants Outlined in Request

Sec. 4. Whenever the governing body of any city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county has requested the Governor of the State of Texas or the state agency established for such purpose to stand in the place and stead of such city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county, all applications for federal grants designated by such local governing body shall be submitted to the governor or such agency of the state established for such purpose. The governor or such state agency shall approve or disapprove grants outlined in the request by the local governing body whenever any federal financial assistance, grant, loan or contract which would accrue to such city, county, school district, hospital district or other political subdivision of the state or political subdivision of the county under any existing federal assistance program is withheld from any such local governmental unit or if payment is deferred because of any action by any agency of the federal government in connection with the federal financial assistance

program, the governor or the state agency established for such purpose shall take whatever action in the discretion of the governor or such state agency established for such purpose deems necessary or appropriate to meet the needs of such city, county, school district, hospital district, or other political subdivision of the state or political subdivision of the county. [Acts 1967, 60th Leg., p. 920, ch. 403, eff. June 8, 1967.]

#### Art. 4413d-3. Contracts with Federal Government for Eradication of Noxious Vegetation from State Waters

The Parks and Wildlife Department is hereby authorized to enter into contracts, agreements or perform these services with departmental personnel, for the eradication of noxious vegetation from the waters of this state. Out of any money appropriated to the Parks and Wildlife Department from the Land and Water Recreation and Safety Fund No. 63, for the fiscal biennium ending August 31, 1969, and ensuing bienniums, the Department may expend the sum of \$200,000, or so much of this amount as may be needed to carry out the purposes of this Act.

[Acts 1967, 60th Leg., p. 1795, ch. 685, § 1, eff. June 17, 1967; Acts 1969, 61st Leg., p. 1480, ch. 439, § 1, eff. June 4, 1969.]

### CHAPTER FIVE. DEPARTMENT OF PUBLIC SAFETY

#### Article

- 4413(1). Creation of the Department of Public Safety.
- 4413(2). Creation of the Public Safety Commission.
- 4413(3). Organization of the Commission.
- 4413(4). Duties and Powers of the Commission.
- 4413(4a). Expenditure of Public Funds; Purposes.
- 4413(5). Directors and Assistant Directors; Salary.
- 4413(6). Duties and Powers of the Director.
- 4413(7). Authority to Issue Commissions.
- 4413(8). Appointment of Division and Bureau Chiefs.
- 4413(9). Appointment, Promotions, and Discharges.
- 4413(10). Department Divisions.
- 4413(11). The Texas Rangers.
- 4413(12). The Texas Highway Patrol.
- 4413(13). The Headquarters Division.
- 4413(14). The Bureau of Identification and Records.
- 4413(15). The Bureau of Communications.
- 4413(16). The Bureau of Intelligence.
- 4413(17). The Bureau of Education.
- 4413(18). Establishment of District Headquarters.
- 4413(18a). Branch Crime Detection Laboratories; Counties to Furnish Building Space; Department to Equip and Operate.
- 4413(19). Law Enforcement Officers Shall Be Associate Members.
- 4413(20). Director May Call Upon Law Enforcement Officers for Assistance.
- 4413(21). Director Shall Provide for Cooperation.
- 4413(22). State Supported Educational Institutions Shall Assist.
- 4413(23). State Officials and Departments Shall Assist.
- 4413(24). When the Governor Shall Command the Department.
- 4413(25). State Shall Provide Necessary Buildings, Equipment, Et Cetera.
- 4413(26). Provisions for Transfer of Funds and Appropriations.
- 4413(27). Provisions for Transfer of Pending Business.
- 4413(28). Provision in Event of Unconstitutionality of a Portion of This Act.

#### Article

- 4413(29). Repeal of Inconsistent Laws.
- 4413(29a). Plant and Buildings for Department.
- 4413(29b). Construction of Act; Reorganization or Consolidation by Commission.
- 4413(29c). Licensing Commercial Driver-Training Schools and Instructors.
- 4413(29d) to 4413(29z). Reserved for Future Legislation.
- 4413(29aa). Commission on Law Enforcement Officer Standards and Education.
- 4413(29bb). Private Investigators and Private Security Agencies Act.
- 4413(29cc). Polygraph Examiners Act.

#### Art. 4413(1). Creation of the Department of Public Safety

There is hereby created a Department of Public Safety of the State of Texas, hereinafter designated as "the Department," in which is vested the enforcement of the laws protecting the public safety and providing for the prevention and detection of crime. The Department shall have its principal office and headquarters in the City of Austin, where all of its records shall be kept.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 1.]

#### Art. 4413(2). Creation of the Public Safety Commission

The control of the Department is hereby vested in the Public Safety Commission, hereinafter designated as "The Commission," which Commission shall consist of three citizens of this State. The Governor shall, within thirty days after this Act shall take effect, appoint the members of the Commission by and with the advice and consent of the Senate to hold office until December 31, 1935, and they shall constitute the Public Safety Commission; and on the 1st day of January, 1936, the Governor shall appoint one member to hold office for two years, one for four years, and one for six years, and at the end of every two years thereafter, the Governor shall in like manner, by and with the advice and consent of the Senate of the State of Texas, appoint one citizen of Texas as the successor of the member of the Commission whose term shall expire in that year, to serve as such member of six years and until his successor is appointed and qualified. The Commission shall elect annually one member of the Commission to serve as chairman thereof. Two members of the Commission shall constitute a quorum. In the event of a vacancy occurring on said Commission, the Governor shall appoint a new member of the Commission to fill the said vacancy for such unexpired term, such appointment to be subject to the advice and consent of the Senate of the State of Texas, at the next session thereof. The members of the Commission shall be selected because of their peculiar qualifications fitting them for these positions. In the appointment of the members of the Commission, the following qualifications among others shall be observed: Knowledge of laws; experience in the enforcement of law; honesty, integrity; education, training and executive ability. They shall serve without compensation, but shall be

entitled to receive Ten (\$10.00) Dollars per day as an expense account and necessary mileage in the performance of their duties, such expense allowance shall not exceed Five Hundred (\$500.00) Dollars annually for each member. [Acts 1935, 44th Leg., p. 444, ch. 181, § 2.]

**Art. 4413(3). Organization of the Commission**

The Commission shall meet at such time and places as they may provide for by rules or as the chairman or any two members may call.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 3.]

**Art. 4413(4). Duties and Powers of the Commission**

(1) The Commission shall formulate plans and policies for the enforcement of the criminal laws and of the traffic and safety laws of the State, the prevention of crime, the detection and apprehension of violators of the laws, and for the education of the citizens of the State in the promotion of public safety and law observance.

(2) It shall organize the Department and supervise its operation; it shall establish grades and positions for the Department, and for each grade and position it shall designate the authority and responsibility within the limits of this Act. For each such grade and position so established, the Commission shall set standards of qualifications and shall fix prerequisites of training, education and experience, and shall make necessary rules and regulations for the appointment, promotion, reduction, suspension and discharge of all employees after hearings before the said Commission; that any officer or employee of the said Department who shall be discharged shall upon application to the Commission be entitled to a public hearing before said Commission and the Commission shall determine whether such discharge shall be affirmed or set aside. All persons inducted into the service of the Department shall be considered on probation for the first six months and at any time during such period they may be discharged if found to be unsuitable for the work by the director, with the advice and consent of the Commission, and, if so discharged, such persons shall not be entitled to the public hearing hereinabove provided for.

(3) The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary and as may not be inconsistent with the provisions of this Act or of the laws of the State.

(4) The Commission shall maintain records of all proceedings and official orders.

(5) The Commission shall biennially submit a report of its work to the Governor, and the Legislature, with its recommendations and those of the Public Safety Director. A quarterly statement containing an itemized list of all moneys received, and from what sources received, and all moneys expended and for what purposes expended, shall be prepared by the

Director sworn to and filed in the records of the Department and a copy shall be sent to the Governor.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 4.]

**Art. 4413(4a). Expenditure of Public Funds; Purposes**

In addition to the authority now provided by law, the Texas Department of Public Safety may expend public funds for the purposes of paying salaries, seasonal or contingent help, travel, transportation, automobile maintenance and repairs, maintenance and repairs of aircraft, gas, oil, tires, bond premiums, office and equipment rentals, storage, repairs, forage, duplicating supplies, printing, telephone, telegraph, postage, stationery, clothing and furnishings, express, freight, drayage, utilities, service materials, office supplies, books, drugs, medical, hospital and laboratory expense, and funeral expense when death results in line of duty, necessary expenses for training and for operating law enforcement training schools, miscellaneous operating expenses, purchase of equipment, guns, automobiles, aircraft, land and construction costs, and any and all necessary equipment, services and supplies for the enforcement of all laws under the supervision of the Department of Public Safety.

[Acts 1957, 55th Leg., 1st C.S., p. 99, ch. 34, § 1.]

**Art. 4413(5). Directors and Assistant Directors; Salary**

The Commission shall appoint a Public Safety Director hereinafter designated as the "Director," who shall be a citizen of this State and who shall hold his position until removed by the Commission. The Commission shall also appoint an Assistant Director who shall perform such duties as may be designated by the Director. The Director and Assistant Director shall be selected on the basis of training, experience, and qualifications for said positions, and shall have at least five (5) years experience, preferably police or public administration. The Director and Assistant Director shall draw annual salaries as fixed by the Legislature. The Director shall be directly responsible to the Commission for the conduct of all the affairs of the Department.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 5; Acts 1937, 45th Leg., p. 772, ch. 373, § 1.]

**Art. 4413(6). Duties and Powers of the Director**

(1) The Director shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to the Commission detailed reports of the operation of the Department and statements of its expenditures.

(2) He shall be the executive officer of the Department, and subject to the approval of the Commission and to the provisions of this Act, he shall have authority to appoint, promote, reduce, suspend and discharge all officers and employees of the Department. He shall issue and sign requisition as provided by

law for the purchase of supplies for the office and officers of the Department, suitable uniforms, arms and equipment; and make such rules and regulations, subject to the approval of the Commission, as are deemed necessary for the control of the Department.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 6.]

#### Art. 4413(7). Authority to Issue Commissions

The Director, under the direction of the Commission, shall issue commissions as law enforcement officers to all members of the Texas Rangers, to all members of the Texas Highway Patrol, and to such other officers of the Department as may be employed by the said Department.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 7.]

#### Art. 4413(8). Appointment of Division and Bureau Chiefs

It shall be the duty of the Director with the advice and consent of the Commission to appoint the Chiefs of the several Bureaus provided for in this Act.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 8; Acts 1937, 45th Leg., p. 772, ch. 373, § 2.]

#### Art. 4413(9). Appointment, Promotions, and Discharges

(1) The appointment and promotion of all officers and employees, shall be made on the basis of merit, to be determined by examinations under the rules and regulations of the Commission which shall take into consideration the age, physical condition, experience and education of the applicant. All persons who have applications on file for any position in the Department shall be given reasonable written notice of the place and time where said examinations are to be held.

(2) All applicants for positions in the Department shall be citizens of the United States of America. No applicant for a position in the Department shall be questioned at any time as to his religious faith or beliefs, or as to his political affiliations. No person in the Department shall contribute any money or other thing of value for political purposes, nor shall any person in the Department engage in political activities or campaign for or against any candidate for any public office in this state. Any person violating any provision of this subsection shall forfeit his position with the Department.

(3) No officer or employee of the Department shall be discharged without just cause. The Director shall determine whether or not the officer or the employee be discharged; and in case he is ordered discharged, he shall have the right to appeal to the Commission; during such appeal, he shall be suspended without pay.

(4) The chiefs of the several Divisions and Bureaus, after due investigation, shall once each six months make a report to the Commission of the efficiency of each employee within such Division or Bureau. These reports shall

be kept in the permanent files of the Commission, and shall be given proper consideration in all matters of promotion and discharge.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 9; Acts 1967, 60th Leg., p. 61, ch. 35, § 1, eff. April 3, 1967.]

#### Art. 4413(10). Department Divisions

The Department shall be composed of three divisions; i. e.

(a) The Texas Rangers;

(b) The Texas Highway Patrol; and

(c) The Headquarters Division, and such other divisions as the Commission may deem necessary.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 10.]

#### Art. 4413(11). The Texas Rangers

(1) The Texas Ranger Force and its personnel, property, equipment and records, now a part of the Adjutant General's Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Rangers, and as such, constitute the above mentioned division of the Department.

(2) The Texas Rangers shall consist of six (6) captains, one headquarters sergeant, and such number of privates as may be authorized by the Legislature, except in cases of emergency when the Commission, with the consent of the Governor, shall have authority to increase the force to meet extraordinary conditions.

(3) The compensation of the officers shall be such as allowed by the Legislature.

(4) The officers shall be clothed with all the powers of peace officers, and shall aid in the execution of the laws.

They shall have authority to make arrests, and to execute process in criminal cases; and in civil cases when specially directed by the judge of a court of record; and in all cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in the discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. All officers operating by virtue of this Act shall have the authority to make arrests, as directed by warrants, and without a warrant under the conditions now authorized by law, and also in all cases when the alleged offender is traveling on a railroad, in a motor vehicle, aeroplane or boat. When any of said force shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he so stands charged, and shall deliver him to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State.

(5) Special Rangers. The Commission shall have authority to appoint as Special Rangers honorably retired commissioned officers of the Texas Department of Public Safety,

and shall, in addition, have authority to appoint such number of Special Rangers as may be deemed advisable, not to exceed three hundred (300) in number; such rangers shall not have any connection with any Ranger Company or uniformed unit of the Department of Public Safety, but they shall at all times be subject to the orders of the Commission and the Governor for special duty to the same extent as the other law enforcement officers provided for in this Act; such Special Rangers, however, shall not have the authority to enforce any laws except those designed to protect life and property, and such rangers are especially denied the authority to enforce any laws regulating the use of the State highways by motor truck and motor buses and other motor vehicles. Such rangers shall not receive any compensation from the State for their services, and before the issuance of the commission each such ranger shall enter into a good and sufficient bond executed by a Surety Company authorized to do business in Texas in the sum of Twenty-five Hundred Dollars (\$2,500), approved by the Director, indemnifying all persons against damages accruing as the result of any illegal or unlawful acts on the part of such Special Ranger. All Special Ranger Commissions shall expire on January 1st of the odd year after appointment, and the Director can revoke any Special Ranger Commission at any time for cause, and such officer shall be designated in the Commission as Special Ranger.

(6) In the execution of the laws of the State under the Department of Public Safety, the officials shall in all cases where it becomes necessary to seize property and destroy the same, to proceed as now provided by law; and all property so seized shall be stored and a list thereof presented to a District Judge in the District where such property is seized, who shall dispose of same in the mode and manner now provided by Articles Nos. 5112, 5113 and 5114, Revised Civil Statutes, 1925.<sup>1</sup>

Any official disregarding these provisions shall by virtue thereof be subject to removal from office.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 11; Acts 1937, 45th Leg., p. 772, ch. 373, § 3; Acts 1971, 62nd Leg., p. 2072, ch. 637, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Repealed. See, now, Penal Auxiliary Laws, art. 666-1 et seq.

Acts 1971, 62nd Leg., p. 1986, ch. 614, created a Texas Ranger Commemorative Commission to commemorate the Texas Rangers during their 150th anniversary year (1973).

#### Art. 4413(12). The Texas Highway Patrol

(1) The State Highway Motor Patrol of Texas and its personnel, property, equipment and records, now a part of the Highway Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Highway Patrol, and as such constitute the above mentioned division of the Department.

(2) The Texas Highway Patrol Division of the Department of Public Safety shall consist

of Chief Patrol Officer, who shall be the executive officer of the Patrol, and not exceeding fifteen (15) captains, and not exceeding twenty (20) sergeants and not exceeding three hundred (300) privates, and such clerical help as may be determined by the Legislature in its biennium appropriation bill. Provided that if an applicant be otherwise qualified as a private thereunder, his literary attainment shall not preclude his appointment as such private.

[Amendment by Acts 1937, 45th Leg., p. 772, ch. 373, § 4, see subd. (2), post.]

(2) The Texas Highway Patrol Division shall consist of the Chief Patrol Officer who shall be the executive officer of the Patrol and such number of captains, sergeants, and privates as may be authorized by the Legislature, and such administrative and clerical help as may be determined by the Commission.

[Amendment by Acts 1937, 45th Leg., p. 174, ch. 91, § 1, see subd. (2), ante.]

(3) The compensation of the officers shall be such as allowed by the Legislature.

(4) The officers, non-commissioned officers and enlisted men of the Texas Highway Patrol shall be, and they are hereby clothed with all the powers and authority which they now have and exercise as members of the State Highway Motor Patrol of Texas, and their duties and functions shall be the same as the duties and functions they are now performing. In addition they shall be, and they are hereby clothed with all the powers and authority which is in this Act or otherwise by law given to members of the Texas Ranger force.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 12; Acts 1937, 45th Leg., p. 174, ch. 91, § 1; Acts 1937, 45th Leg., p. 772, ch. 373, § 4.]

#### Art. 4413(13). The Headquarters Division

There is hereby created, as an integral part of the Department, a Headquarters Division, consisting of the Bureaus of Identification and Records, Communications, Intelligence and Education. With the advice and consent of the Commission, the Director shall employ such chiefs, experts, operators, instructors and assistants as may be necessary for the operation of this Division and the several Bureaus therein.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 13.]

#### Art. 4413(14). The Bureau of Identification and Records

(1) It shall be the duty of the Director to appoint, with the advice and consent of the Commission, a Chief of the Bureau of Identification and Records, who shall be the executive officer. The Chief of the Bureau and at least one assistant shall be recognized identification experts, and with at least three years' actual experience. This Bureau shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of a felony within the State, and also of all

well known and habitual criminals wheresoever the same may be procured. The Bureau shall collect information concerning the number and nature of offenses known to have been committed in this State, of the legal steps taken in connection therewith, and such other information as may be useful in the study of crime and the administration of justice. It shall be the duty of the Bureau to co-operate with the bureaus in other states, and with the Department of Justice in Washington, D.C. It shall be the duty of the Chief of the Bureau to offer assistance, and, when practicable, instruction, to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts.

(2) The Bureau shall make ballistic tests of bullets and firearms, and chemical analyses of bloodstains, cloth, materials and other substances, for the officers of the State charged with law enforcement.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 14.]

#### Art. 4413(15). The Bureau of Communications

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Communications.

(2) This Bureau may, when funds are provided, install and operate a police radio broadcasting system for the broadcasting of information concerning the activities of violators of the law, and for the directing of the activities and functions of the law enforcement agencies of the State, the counties and the municipalities. It shall co-operate with county and municipal police authorities and with police radio stations, in this State and in other states.

(3) The Bureau shall establish and operate a State Roads Blockade System, in co-ordination with State, county and municipal law enforcement agencies.

(4) This Bureau shall provide for the rapid exchange of information, concerning the commission of crimes and the detection of violators of the law, between the law enforcement agencies of this State, its counties and municipalities and other states and the national government.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 15; Acts 1937, 45th Leg., p. 772, ch. 373, § 5.]

#### Art. 4413(16). The Bureau of Intelligence

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Intelligence.

(2) This Bureau shall, with the aid of the other Divisions and Bureaus of the Department, accumulate and analyze information of crime activities in the State, and shall make such information available for the use of the Department and of county and municipal police and law enforcement agencies.

(3) It shall aid in the detection and apprehension of violators of the law.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 16; Acts 1937, 45th Leg., p. 772, ch. 373, § 6.]

#### Art. 4413(17). The Bureau of Education

(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Education. The Chief of said Bureau shall organize schools for the members of the Department and other peace officers, and shall give instruction in such schools, and he shall have had substantial experience in law enforcement work and in the instruction of law enforcement officers.

(2) This Bureau shall establish and operate schools for the training of the personnel of the Department in their respective duties and functions.

(3) This Bureau shall establish and operate schools for the training of county and municipal police officers who have been selected to attend such schools by the authorities of the law enforcement agencies by which they are employed.

(4) A comprehensive plan shall be established and carried out for the education of the citizens of this State in matters of public safety and crime prevention and detection.

(5) The Adjutant General shall provide suitable buildings, land and State owned equipment located in Camp Mabry, Austin, Texas, for the use of this Bureau in the conduct of its training schools.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 17; Acts 1937, 45th Leg., p. 772, ch. 373, § 7.]

#### Art. 4413(18). Establishment of District Headquarters

The Commission may establish district headquarters and stations at various places in the State, with the personnel and equipment necessary for the proper functioning and operation thereof.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 18.]

#### Art. 4413(18a). Branch Crime Detection Laboratories; Counties to Furnish Building Space; Department to Equip and Operate

Sec. 1. The Commissioners Court of each county in this State is hereby authorized to furnish to the State Department of Public Safety the necessary building space for establishing a branch crime detection laboratory to serve the general area of the State in which the county is located. When a county offers to furnish the necessary space, the Department of Public Safety is authorized to equip and operate the laboratory within the limits of its general authority and available appropriations. Except where the Legislature has specifically directed the establishment and operation of a branch laboratory, the Public Safety Commission shall have the discretion to decide whether a branch laboratory should be established or maintained.



Sec. 2. Upon the condition that the Commissioners Court of El Paso County shall furnish without cost to the State the necessary building space, the Department of Public Safety is hereby specifically directed to establish and operate a branch crime detection laboratory in El Paso County for the purpose of serving the West Texas area, whenever in the discretion of the Department of Public Safety the efficient enforcement of law necessitates the establishment of such branch crime detection laboratory, and sufficient funds are available in the department.

[Acts 1957, 55th Leg., p. 1265, ch. 423.]

**Art. 4413(19). Law Enforcement Officers Shall Be Associate Members**

The sheriffs and constables of the several counties in this State, and the chiefs of police of all incorporated municipalities, are hereby made associate members of the Department, and are entitled to all rights and privileges granted to them by the Department.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 19.]

**Art. 4413(20). Director May Call Upon Law Enforcement Officers for Assistance**

The director shall have the authority to call upon any sheriff or other police officer in any county or municipality within the limits of their respective jurisdictions, for aid and assistance in the performance of any duty imposed by this Act; and upon being notified or called upon for such aid and assistance, it shall be the duty of such officer concerned to comply with such order to the extent requested.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 20.]

**Art. 4413(21). Director Shall Provide for Cooperation**

The Director, with the advice and consent of the Commission, shall formulate and put into effect plans and means of cooperating with the sheriffs and local police and peace officers throughout the State for the purpose of the prevention and discovery of crimes and the apprehension of criminals and the promotion of public safety; and it shall be the duty of all such local police and peace officers to cooperate with the Director in such plans. Every telegraph and telephone company and radio station operating within this State shall grant priority of service to the police agencies and to the Department of Public Safety, when notified that such service is urgent in the interests of the public welfare.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 21.]

**Art. 4413(22). State Supported Educational Institutions Shall Assist**

The University of Texas and all other State supported educational institutions shall cooperate with the Department in carrying out the provisions of this Act, and shall aid and assist in the giving of instruction in the training schools conducted by the Bureau of Education,

and shall aid and assist the Bureau of Identification and Records in the making of such chemical tests and analyses as are necessary, and in the making of statistical analyses, charts and reports of law enforcement and violations of law; the nature and extent of such aid and assistance is to be agreed upon and arranged for by the Commission and the President of the educational institution called upon for such aid and assistance.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 22.]

**Art. 4413(23). State Officials and Departments Shall Assist**

The Attorney General of the State of Texas, the Highway Department, the Public Health Department and all other departments of the government of the State of Texas shall cooperate with the Department of Public Safety in the execution of the provisions of this Act and in the enforcement of the laws of the State concerning crime prevention and detection and the public safety. The Board of Control is hereby directed to provide suitable quarters for the Department of Public Safety in the basement of the Land Office Building until more suitable quarters are available.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 23.]

**Art. 4413(24). When the Governor Shall Command the Department**

Upon the occurrence of a public disaster, riot, or insurrection, or the formation of a dangerous resistance to the enforcement of the law, or for the purpose of performing his constitutional duty to cause the laws to be enforced, the Governor of this State shall have the authority to assume the command of and direct the activities and functions of the Commission and of the Department during the existence of such emergency or necessity. In the event that the Governor of this State shall take such action, he shall first use the officers and personnel of the Department other than the Texas Highway Patrol and the said Patrol shall so be called upon or diverted from its regular duties only in the event that the Department is otherwise unable to cope with the emergency.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 24.]

**Art. 4413(25). State Shall Provide Necessary Buildings, Equipment, Et Cetera**

The State of Texas shall provide the necessary buildings, offices and quarters for the Department and its officers and employees in the City of Austin, Texas, and in such other places in the State as district headquarters shall be established, and it shall also provide for the equipment of the Department and the Divisions, bureaus and branches thereof, with the furniture, fixtures, automobiles, motorcycles, horses, firearms, ammunition, uniforms, appliances and materials necessary to the proper functioning and operation thereof.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 25.]

**Art. 4413(26). Provisions for Transfer of Funds and Appropriations**

For the purpose of carrying out the provisions of this Act, there is hereby transferred to the credit of an account to be designated and known as the Department of Public Safety of the State of Texas, any moneys in the General Fund credited to the Texas Ranger Force of the Adjutant General's Department, the Highway Motor Patrol Division of the Highway Department of the State of Texas for the remainder of the biennium commencing on the effective date of this Act, and there is hereby appropriated out of the General Revenue of this State the additional sum of Five Thousand (\$5,000.00) Dollars for the purpose of carrying out the provisions of this Act for the biennium ending August 31, 1935, and thereafter by moneys to be appropriated by the Legislature of the State of Texas. All appropriations for the Texas Highway Patrol shall be made by the Legislature from and out of the State Highway Fund.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 26.]

**Art. 4413(27). Provisions for Transfer of Pending Business**

All matters and orders pending before or made by any office or department or unit transferred under this Act to this Department, shall be deemed to be continued with like status in such Department.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 27.]

**Art. 4413(28). Provision in Event of Unconstitutionality of a Portion of This Act**

Should any section or provision of this Act be held to be unconstitutional by any court of competent jurisdiction, the same shall not affect the validity of the Act as a whole, or any part thereof, other than the portion so held to be invalid. The Legislature hereby declares that it would have passed this Act had such part been omitted.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 28.]

**Art. 4413(29). Repeal of Inconsistent Laws**

All laws or parts of laws inconsistent or conflicting with the provisions of this Act are hereby repealed.

[Acts 1935, 44th Leg., p. 444, ch. 181, § 29.]

**Art. 4413(29a). Plant and Buildings for Department**

Sec. 1. The Texas Department of Public Safety is authorized and fully empowered to construct a physical plant consisting of appropriate buildings, structures and equipment, upon the land hereinafter described. Such plant shall be under the control and management of the Texas Department of Public Safety for the use and benefit of the State in the discharge of the official duties of said Department.

Sec. 2. The tract of land now owned by the State of Texas and upon which such building

or buildings shall be erected is described as follows, to-wit: 84-12/100 acres situated about one mile North of the Austin State Hospital and being what is known as the old Linzing home tract, being more particularly described as follows: 84-12/100 acres of land in Travis County, Texas, about one mile North of the City of Austin, Texas, and a part of the James P. Wallace League Survey No. 57, and by metes and bounds described as follows: Beginning at a stake in the West line of said league 1502 varas from its S. W. corner. Thence S. 60' E. 533½ varas crossing Waller Creek to a stone set in its East Bank. Thence N. 31' 10" E. crossing said creek at 12-240 & 401 varas, at 605 varas a stone on West bank of same. Thence S. 59-¾' E. 160 varas to a stone for corner. Thence parallel with a line of Bois D'Arc Ledge 211½ varas to a stone for corner. Thence No. 60' W. crossing a tank about 50 varas wide, 706⅔ to a stake on the West line of said League. Thence with said West line S. 30° W. 816 varas to the place of beginning.

There is, however, excepted from this Act, all that lot, tract or parcel of land consisting of 25.69 acres conveyed to the Austin Independent School District by House Bill No. 606, Acts of the 51st Texas Legislature,<sup>1</sup> said 25.69 acres being a part of the 84.12 acres described by metes and bounds herein.

Sec. 3. The Texas Department of Public Safety may employ architects to prepare plans, specifications, drafts, and such other architectural aids as may be necessary and to supervise the construction and equipping of such building or buildings; and may also expend such other sums as are necessarily incidental to such construction and equipping. The contracts for the construction and equipping of any such building shall be let on competitive bids to the lowest and best bidder after reasonable advertisement; the Department may reject any and all bids.

Sec. 4. For the purpose of carrying out the provisions of this Act there is hereby appropriated to the Texas Department of Public Safety all funds remaining in the Operator and Chauffeurs License Fund (created by Section 15 of Article III of House Bill No. 20, as amended), on August 31, 1949, August 31, 1950 and August 31, 1951.

All disbursements hereunder shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety and approved by one other member of the Commission or the Director, and such voucher shall be accompanied by itemized sworn statements of the expenditures for which they are issued.

Sec. 5. All laws and parts of laws in conflict herewith are hereby suspended to the extent of such conflict and for the periods of time necessary to give effect to this Act.

[Acts 1949, 51st Leg., p. 882, ch. 475.]

<sup>1</sup> Acts 1949, p. 718, ch. 381.

**Art. 4413(29b). Construction of Act; Reorganization or Consolidation by Commission**

The enumeration herein of certain designated divisions and chiefs of divisions shall not be construed as mandatory and nothing herein shall prevent the Public Safety Commission from affecting a reorganization or consolidation in the interest of the more efficient and economical management and direction of the Department, it being the purpose of this Act to authorize the Director, with the approval of the Public Safety Commission, to organize and maintain within this Department such divisions of service as are deemed necessary for the efficient conduct of the work of the Department. Provided that the number of divisions shall not exceed the number of divisions existing at the time of passage of this Act. And further that the division relating to Texas Rangers shall not be abolished.

[Acts 1957, 55th Leg., p. 554, ch. 261, § 1.]

**Art. 4413(29c). Licensing Commercial Driver-Training Schools and Instructors**

**Definitions of Words and Phrases**

Sec. 1. The following words and phrases when used in this Act shall, for the purposes of this Act have the meanings respectively ascribed to them in this section:

(a) "Commercial driver-training school" or "school" means any enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles and charging a consideration or tuition for such services.

(b) "Commercial driver-training school branch office" is a training facility operated by a commercial driver-training school at a different location than the home training facility where the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles and charging a consideration or tuition therefor is carried on.

(c) "Driver-training instructor" or "instructor" means any person who for hire or for tuition teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to operate or drive motor vehicles.

(d) "Department" means the Department of Public Safety of this state, acting directly or through its duly authorized officers and agents.

(e) "Hearing Officer" is an officer or employee of the Department appointed by the Director, which officer or employee shall have a minimum of five years' experience as a supervisor and a thorough knowledge of this Act and the rules and regulations of the Department relative thereto.

(f) "Motor vehicle" includes every vehicle which is self-propelled and every vehi-

cle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(g) "Supervisory driver-training instructor" or "supervisory instructor" means any person who, for hire or tuition, conducts classes of, gives demonstration to, or supervises practice of persons learning to become driver-training instructors, and to operate or drive motor vehicles.

**A License Required for Commercial Driver-Training School**

Sec. 2. No person, firm, association, partnership, or corporation shall operate a commercial driver-training school after January 1, 1968, unless a license as a commercial driver-training school has been secured from the Texas Department of Public Safety, provided that training or classes conducted by colleges, universities, high schools, and junior high schools for regularly enrolled students as a part of the normal program for such institutions shall be exempt.

**Application for Commercial Driver-Training School License**

Sec. 3. The application for a license shall be made on forms supplied by the Texas Department of Public Safety and must state specifically the name and address of such school or training facility, and give the name and address of the person, each member of the firm or association, each member of the partnership or corporation, and of each director and officer of such corporation. The application shall also contain the following information:

(a) The name and address of each branch office of such commercial driver-training school;

(b) The name and address of each instructor;

(c) Such other information relating to the operation of such school as may be required by the Texas Department of Public Safety to insure that the public interest will be protected;

(d) An agreement that the school will be operated in conformity with the rules and regulations established by the Texas Department of Public Safety for the operation of commercial driver-training schools.

**Requisites for License**

Sec. 4. Before the Department of Public Safety shall issue such license, the person, firm, association, partnership, or corporation shall:

(a) Execute a bond in the sum of \$10,000, signed by a solvent guaranty company authorized to do business in the State of Texas, payable to the Texas Department of Public Safety, conditioned that the principal on said bond will:

(1) Carry out and comply with each and all contracts made or entered into by said school or branch school, acting

by and through its officers or agents, with any student who desires to enter such school and to take the course in driver-training; and

(2) To pay back to such student all amounts collected for tuition and fees in case of failure on the part of the school to comply with its contracts to give the instruction contracted for, and for the period evidenced by such contract on a pro rata basis.

(b) Maintain motor vehicle liability insurance covering the school, instructors, and any person taking instruction in the amount as prescribed by the Department but in no event less than \$10,000 for bodily injury to or death of one person in any one accident, and \$20,000 for bodily injury to or death of two or more persons in any one accident, and \$5,000 for damage to property in any one accident. In the event the insurance coverage hereinabove referred to is to be cancelled, a copy of the written notice of cancellation must be furnished forthwith to the Director by either registered or certified mail.

(c) Provide adequate office, classroom, and motor vehicle facilities in compliance with the rules and regulations established by the Department of Public Safety to insure that the quality of instruction and training shall not be inimical to the public interest.

(d) Comply with such other rules and regulations as may be promulgated by the Department of Public Safety to insure adequate driver instruction.

**License Required for Supervisory Driver-Training Instructor and Driver-Training Instructor**

Sec. 5. No person shall teach or give driver-training for hire or for tuition, either as an individual or in a commercial driver-training school, or any phase of driver-training or education after January 1, 1968, unless a license as a driver-training instructor or supervisory driver-training instructor has been secured from the Department, provided that instructors in classes conducted by colleges, universities, high schools, and junior high schools for regularly enrolled students as a part of the normal program for such institutions shall be exempt.

**Application for Supervisory Driver-Training Instructor's License**

Sec. 6. (a) The application for a license as a supervisory driver-training instructor shall be made on forms supplied by the Department of Public Safety. A person is qualified to receive a supervisory driver-training instructor's license who:

- (1) Is at least 21 years of age;
- (2) Is of good moral character;
- (3) Is a citizen of the United States;
- (4) Has no contagious disease;

(5) Holds a valid Texas chauffeur's license;

(6) Has successfully completed three semester hours in safety education and three semester hours in driver education or their equivalent;

(7) Has passed an examination conducted by the Department of Public Safety to determine his competency to obtain a license to practice as a supervisory driver-training instructor;

(8) Has two years' satisfactory driving experience as approved by the Department.

(b) On the effective date of this Act, any person who is actually engaged or employed as a supervisory driver-training instructor and has a minimum of one year's experience in such activity shall, upon application within 90 days after the effective date of this Act and payment of the required license fees, be issued a supervisory driver-training instructor's license effective no longer than one year from the date of issuance, provided, however, that the Department of Public Safety may require such applicant to submit satisfactory proof that he is so engaged and comply with the requirements set out in Section 6(a) above, except the requirement of Subsection (6). Such license shall be renewable annually so long as he complies with Department rules and regulations.

**Application for Driver-Training Instructor's License**

Sec. 7. (a) The application for a license as a driver-training instructor shall be made on forms supplied by the Department of Public Safety. A person is qualified to receive a driver-training instructor's license who:

- (1) Is at least 21 years of age;
- (2) Is of good moral character;
- (3) Is a citizen of the United States;
- (4) Has no contagious disease;
- (5) Holds a valid Texas chauffeur's license;

(6) Has successfully completed 40 clock hours in safety education and driver-training under the supervision of a supervisory driver-training instructor;

(7) Has passed an examination conducted by the Department of Public Safety to determine his competency to obtain a license to practice as an instructor;

(8) Has two years' satisfactory driving experience as approved by the Department.

(b) On the effective date of this Act, any person who is actually engaged or employed as a driver-training instructor and has a minimum of one year's experience in such activity shall, upon application within 90 days after the effective date of this Act and payment of the required license fees, be issued a driver-training instructor's license effective no longer than one year from the date of issuance, provided, however, that the Department of Public Safety may require such applicant to submit

satisfactory proof that he is so engaged and comply with the requirements set out in Section 7(a) above, except the requirement of Subsection (6). Such license shall be renewable annually so long as he complies with Department rules and regulations.

#### License Fees

Sec. 8. Each application for an original commercial driver-training school or branch office license shall be accompanied by a \$150 investigation fee and upon approval shall pay an annual license fee of \$200. The investigation fee shall be payable only once, at the time of the original application. The license of each commercial driver-training school or branch office may be renewed subject to the same requirements as the original license, and upon payment of the annual renewal license fee of \$200. Each application for an original supervisory instructor's or instructor's license shall be accompanied by an investigation and examination fee of \$50 and upon approval such applicant shall pay an annual license fee of \$25. The investigation and examination fee shall only be payable with the original application. No license fee shall be refunded in the event that the license is suspended or revoked.

The fee for a duplicate license shall be \$2. A duplicate license may be issued to replace an original license if the original is lost or destroyed and an affidavit of such fact is made and filed with the Department.

All licenses issued to commercial driver-training schools, branch offices, supervisory instructors, and driver-training instructors shall expire automatically on December 31 of the calendar year for which the license was issued, unless sooner suspended or revoked as provided by this Act.

All fees collected under this Act shall be deposited in the State Treasury in the Operator's and Chauffeur's License Fund.

A commercial driver-training school or branch office license must be prominently displayed at the place of business of the commercial driver-training school or branch office. The supervisory driver-training instructor and driver-training instructor license must be carried by the instructor at all times while instructing. Each license shall be signed by the Director of the Department of Public Safety and shall be issued under the seal of the Department.

#### Refusal, Suspension, Revocation Grounds

Sec. 9. The Department may suspend, revoke, or refuse a license to any commercial driver-training school or branch school, supervisory instructor or driver-training instructor on any one or more of the following grounds;

(a) When the Department is satisfied that the applicant or licensee fails to meet the requirements to receive or hold a license under this Act;

(b) When the applicant or licensee permits fraud or engages in fraudulent prac-

tices either with reference to the application to the Department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit, or permits or engages in any other fraudulent practice in any action between the applicant or licensee and the public;

(c) When the applicant or licensee fails to comply with the rules and regulations of the Department of Public Safety regarding the instruction of drivers in this state or fails to comply with any section of this Act.

#### Hearing

Sec. 10. (a) When there is cause to refuse an application or to suspend or revoke the license of any commercial driver-training school, branch office, supervisory driver-training instructor, or driver-training instructor, the Department, not less than 30 days before refusal, suspension, or revocation action is taken, shall notify such person in writing, in person, or by certified mail at the last address supplied to the Department by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Department. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the Department for this administrative hearing, the Department is authorized to suspend or revoke the commercial driver-training school's, branch office's, supervisory driver-training instructor's, or driver-training instructor's license without a hearing. Upon receipt by the Department of such written request of such person within the 20-day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practical. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or licensee. Administrative hearing in such cases shall be before a qualified Hearing Officer of the Department.

(b) The Department, represented by the Hearing Officer, shall conduct the administrative hearing and the Hearing Officer is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the Department shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

#### Judicial Review

Sec. 11. Any person dissatisfied with the action of the Department in refusing his appli-

cation, or suspending or revoking his license, or any other action of the Department, may appeal the action of the Department by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the District Court of Travis County, Texas, and the court is vested with jurisdiction, and it shall be the duty of the court, to set the matter for hearing upon 10 days' written notice to the Department and the attorney representing the Department. The court in which the petition of appeal is filed shall determine whether or not the suspension or revocation of the license shall be abated until the hearing shall have been consummated with final judgment thereon, or whether any other action of the Department shall be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the Department, and the court shall provide the attorney representing the Department with a copy of the petition and order. The Department shall be represented in such appeals by the district or county attorney of the county, or the Attorney General, or any of their assistants. The trial on such appeal shall be de novo as in cases appealed from the justice to the county court.

#### Surrender of License

Sec. 12. Upon the revocation or suspension of any license, the licensee shall within five days surrender the license or licenses to the Department; failure of a licensee to do so shall be a violation of this Act and upon conviction shall be subject to the penalties hereinafter set forth. The Department may restore a suspended license to the former licensee upon full compliance with the provisions of this Act. No suspension invoked hereunder shall be for a period less than 30 days nor longer than one year.

#### Proceedings Through the Attorney General

Sec. 13. If any person violates any of the provisions of this Act, the Director of the Department of Public Safety shall, in the name of the State of Texas through the Attorney General of the State of Texas, apply in any district court of competent jurisdiction for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition to the court, if the court or any judge thereof is satisfied by affidavit or otherwise that the person has violated this Act, it may issue a temporary injunction without notice or bond enjoining such continued violation, and if after a hearing it is established that the person violated or is violating this Act the court or any judge thereof may enter a decree perpetually enjoining the violation of or enforcing compliance with this Act. In case of violation of any order or decree issued under the provisions of this section, the court or any judge thereof may try and punish the offender for contempt of court. Proceedings under this section shall be in addition to and not in lieu

of all other remedies and penalties provided by this Act.

#### Driver-Training Instruction for Hire in Licensed School

Sec. 14. No motor vehicle driver-training instruction shall be conducted for hire or tuition unless in a licensed commercial driver-training school or one of its branch offices except as set out in Section 2 and in counties with a population of less than 25,000 where driver-training instruction may be given by a supervisory instructor or instructor not connected with or in a commercial driver-training school.

#### Penalties

Sec. 15. Any person who violates any provision of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a term of not to exceed six months, or both.

[Acts 1967, 60th Leg., p. 794, ch. 332, eff. Aug. 28, 1967.]

Section 16 of Acts 1967, 60th Leg., p. 794, ch. 332 provides: "Constitutionality. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional."

Arts. 4413(29d) to 4413(29z). Reserved for Future Legislation

Art. 4413(29aa). Commission on Law Enforcement Officer Standards and Education

#### Creation

Sec. 1. There is hereby created the Commission on Law Enforcement Officer Standards and Education, hereinafter called "Commission."

#### Powers of Commission

Sec. 2. The Commission shall have the authority and power to:

(a) Promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this state which employs peace officers.

(b) Establish minimum educational, training, physical, mental and moral standards for admission to employment as a peace officer:

(1) in permanent positions, and

(2) in temporary or probationary status.

(c) Certify persons as being qualified under the provisions of this Act to be peace officers.

(d) Certify persons as having qualified as law enforcement officer instructors under such conditions as the Commission may prescribe.

(e) Establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the state or any political subdivisions thereof for the specific purpose of training peace officers or recruits for the position of a peace officer.

(f) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of peace officer training schools and programs of courses of instruction.

(g) Approve, or revoke the approval of, institutions and facilities for schools operated by or for the state or any political subdivision thereof for the specific purpose of training peace officers or recruits for the position of peace officer, and issue certificates of approval to such institutions and revoke such certificates of approval.

(h) Operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic and advanced courses, for peace officers and recruits for the position of peace officer as the Commission may determine.

(i) Contract with other agencies, public or private, or persons, as the Commission deems necessary for the rendition and affording of such services, facilities, studies and reports as it may require to cooperate with municipal, county, state and federal law enforcement agencies in training programs, and to otherwise perform its functions.

(j) Make or encourage studies of any aspect of law enforcement, including police administration.

(k) Conduct and stimulate research by public and private agencies which shall be designed to improve law enforcement and police administration.

(l) Employ an Executive Director and such other personnel as may be necessary in the performance of its functions.

(m) Visit and inspect all institutions and facilities conducting courses for the training of peace officers and recruits for the position of peace officer and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the Commission's rules and regulations.

(n) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(o) Accept any donations, contributions, grants or gifts from private individuals or foundations or the federal government.

(p) Report annually to the Governor and to the Legislature at each regular ses-

sion on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable.

(q) Meet at such times and places in the State of Texas as it deems proper; meetings shall be called by the Chairman upon his own motion, or upon the written request of five members.

#### Reserve Officers; Minimum Standards

Sec. 2A. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum training standards for all reserve law enforcement officers which must be fulfilled before a person appointed as a reserve law enforcement officer may carry a weapon or otherwise act as a peace officer.

(b) The Commissioner shall establish minimum physical, mental, educational, and moral standards for all reserve law enforcement officers.

#### Membership; Qualifications and Terms; Vacancies

Sec. 3. The Commission shall be composed of nine members, residents of the State of Texas, and appointed by the Governor with the advice and consent of the Senate. Such members shall be persons well qualified by experience or education in the field of law enforcement. The Commissioner of Higher Education of the Coordinating Board, Texas College and University System, Commissioner of the Texas Education Agency, the Director of the Texas Department of Public Safety and the Attorney General shall serve as ex officio members of the Commission. In the event a public officer shall be appointed, service by such officer or officers shall be an additional duty of the office. Such appointive members shall be appointed for a term of six years, provided, however, that of the members first appointed, three shall be appointed for a term of two years, three for a term of four years, and three for a term of six years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed. Such appointment for unexpired term shall be with the advice and consent of the Senate.

#### Officers; Quorum; Meetings

Sec. 4. The Commission shall elect a chairman, vice-chairman, and secretary from among the appointed members at its first meeting, and thereafter at its first meeting succeeding new appointments to fill regular terms. Five members shall constitute a quorum. The Governor shall summon the Commission to its first meeting.

#### Compensation; Expenses

Sec. 5. Members of the Commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

## Authority of Commission

Sec. 6. The Commission shall have the authority to:

(a) certify law enforcement training and education programs as having attained the minimum required standards suggested by such Commission;

(b) certify instructors as having qualified as law enforcement officer instructors under such conditions as the Commission may prescribe;

(c) direct research in the field of law enforcement and to accept grants for such purposes;

(d) recommend curricula for advanced courses and seminars in law enforcement training in junior colleges and institutions of higher education at the request of the Coordinating Board of the Texas College and University System.

## Peace Officers; Tenure; Probationary Appointments; Training

Sec. 6. (a) Peace officers already serving under permanent appointment prior to September 1, 1970, shall not be required to meet any requirement of Subsections (b) and (c) of this section as a condition of tenure or continued employment, nor shall failure of any such officer to fulfill such requirements made him ineligible for any promotional examination for which he is otherwise eligible. The Legislature finds, and it is hereby declared to be the policy of this Act, that such peace officers have satisfied such requirements by their experience.

(b) No person after September 1, 1970, shall be appointed as a peace officer, except on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory program of training in law enforcement at a school approved or operated by the Commission. Any peace officer who has received a temporary or probationary appointment as such on September 1, 1970, or thereafter, and who fails to satisfactorily complete a basic course in law enforcement, as prescribed by the Commission, within a one-year period from the date of his original appointment, shall forfeit his position as a peace officer and shall be removed therefrom; and may not have his temporary or probationary employment extended beyond one year by renewal of appointment or otherwise; except that after the lapse of one year from the date of his forfeiture and removal, a local law enforcement agency may petition the Commission for reinstatement of temporary or probationary employment of such individual, such reinstatement resting within the sole discretion of the Commission.

(c) In addition to the requirements of Subsection (b) of this section, the Commission, by rules and regulations, may establish other qualifications for the employment of peace officers, including minimum age, education, physical and mental standards, citizenship,

good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of peace officers, and the Commission shall prescribe the means of presenting evidence of fulfillment of these requirements. No person shall be appointed as a peace officer unless he fulfills such requirements.

(d) The Commission shall issue a certificate evidencing satisfaction of the requirements of Subsections (b) and (c) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the Commission for approved law enforcement education and training programs in this state.

(e) Any person who accepts appointment as a peace officer, or any person who appoints or retains an individual as a peace officer, in violation of Subsections (b) or (c) of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00).

(f) Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring or training peace officers which exceed the minimum standards set by the Commission nor shall anything herein be construed to affect any sheriff, constable or other law enforcement officer elected under the provisions of the Constitution of the State of Texas.

(g) Any peace officer already serving under permanent appointment prior to September 1, 1970, and any sheriff, constable, or other law enforcement officer elected to office under the provisions of the Constitution of the State of Texas, shall be eligible to attend peace officer training courses subject to the rules and regulations established by the Commission.

## Peace Officer Training Programs

Sec. 7. (a) The Commission shall establish and maintain peace officer training programs to be conducted by its own staff or through such agencies and institutions as the Commission may deem appropriate.

(b) The Commission may authorize reimbursement for each political subdivision and each state agency for expenses in attending such training programs as authorized by the Legislature.

## Powers and Duties of Municipal or County Governments

Sec. 8. Except as expressly provided in this Act, nothing herein contained shall be deemed to limit the powers, rights, duties and responsibilities of municipal or county governments, nor to affect provisions of Article 1269m; Fire and Police Civil Service Acts of the Vernon's Civil Statutes.



## Funds

Sec. 9. The Legislature of the State of Texas shall appropriate the necessary funds for the purpose of carrying out the provisions of this Act.

## Appeals

Sec. 9A. Any person dissatisfied with the action of the Commission may appeal the action of the Commission by filing a petition within thirty (30) days thereafter in the district court in the county where the person resides or in the district court of Travis County, Texas, and the court is vested with jurisdiction, and it shall be the duty of the court, to set the matter for hearing upon ten (10) days written notice to the Commission and the attorney representing the Commission. The court in which the petition of appeal is filed shall determine whether any action of the Commission shall be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the Commission, and the Commission shall provide the attorney representing the Commission with a copy of the petition and order. The Commission shall be represented in such appeals by the district or county attorney of the county, or the Attorney General, or any of their assistants.

[Acts 1965, 59th Leg., p. 1158, ch. 546; Acts 1969, 61st Leg., p. 998, ch. 323, §§ 1 to 5, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1739, ch. 506, § 3, eff. Aug. 30, 1971.]

**Art. 4413(29bb). Private Investigators and Private Security Agencies Act**

**SUBCHAPTER A. GENERAL PROVISIONS**

## Short Title

Sec. 1. This Act may be cited as the Private Investigators and Private Security Agencies Act.

## Definitions

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

(1) "board" means the Texas Board of Private Investigators and Private Security Agencies;

(2) "private patrol security operator, or operator of a private patrol service" means any person who furnishes or agrees to furnish a watchman, guard, patrolman, security systems service, courier service, armored car service, guard dog service, or other person to protect persons, or property or to prevent theft, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind or who performs the service of a watchman, guard, patrolman, or other person for these purposes, but including managers as defined under Section 19 of this Act.

(3) "private detective or private investigator" means any person who engages in

the business or accepts employment to furnish, agrees to make, or makes any investigation for the purposes of obtaining information with reference to

(a) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America.

(b) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(4) "Undercover Agent" means a person hired by an individual, firm, or corporation; to perform a job in and/or for that individual, firm or corporation; and while performing said job to act as an undercover agent, an employee or an independent contractor of a licensee, but supervised by a licensee.

(5) "Armored Car Service" for the purpose of this Act shall mean any person or company that transports or offers to transport from one place or point to another place or point, currency, jewels, stocks, bonds, paintings or other valuables with a high degree of security and certainty of delivery.

(6) "Courier Service" for the purpose of this Act shall mean any person or company that transports or offers to transport under armed guard from one place or point to another place or point, documents, papers, maps, stocks, bonds, checks or any other small item that requires expeditious delivery.

(7) "Security Systems Service" for the purpose of this Act shall mean any person or company that installs, and/or services and/or responds to alarm signal devices, burglar alarms, television cameras, still cameras or any other electrical, mechanical, or electronic device installed and/or used to prevent or detect burglary, theft, shoplifting, pilferage and other losses.

(8) "Branch Office" for the purpose of this Act shall mean an office established or maintained at some place other than the principal place of business as shown in board records or when business is solicited or advertised from an address or to a telephone number other than those listed for

the principal place of business as recorded in board records.

(9) "Guard Dog Service" for the purpose of this Act shall mean any firm, individual or corporation that is contracted by another firm, individual or corporation to place, lease, rent or sell a trained dog for the purpose of protecting property and/or any firm, individual or corporation that is contracted to train a dog for the purpose of protecting property after placing, leasing, renting or selling of such animal.

#### Entitlement to License Application

Sec. 3. (a) A person is entitled to apply for a license under this Act who

- (1) is at least 21 years of age;
- (2) is a citizen of the United States of America;
- (3) is of good moral character and temperate habits, who is not a convicted felon;
- (4) complies with any other reasonable qualifications that the board may fix by rule.

(b) An applicant or his manager, who applies for a license as a private investigator or a private detective shall have three (3) years consecutive experience prior to the date of said application in the investigative field, as an employee, manager, or owner of an investigative agency; or worked in an investigative capacity for some firm, or any city, county, state, or federal investigative agency; or requirements as shall be set by the board.

(c) An applicant, or his manager, for a license as a private patrol operator shall have two (2) consecutive years experience prior to the date of said application as a patrolman, guard, watchman, security system service operator or employee, or requirements as shall be set by the board.

### SUBCHAPTER B. ADMINISTRATION

#### Creation of Board

Sec. 4. (a) A Texas Board of Private Detectives, Private Investigators, and Private Security Agencies is created to carry out the functions and duties conferred upon it by this Act.

(b) The position of director of the Texas Board of Private Detectives is created. He shall serve as chief administrator of the board. His salary shall be determined by the Legislature.

#### Board Membership

Sec. 5. The board is composed of the following members:

- (1) the director of the Texas Department of Public Safety or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

4 West's Tex.Stats. & Codes—22

(2) the Attorney General or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(3) one city or county law enforcement officer shall be appointed by the Governor, with the advice and consent of the Senate;

(4) two members shall be appointed by the Governor, with the advice and consent of the Senate, who are citizens of the United States and residents of the State of Texas, one of whom shall serve as chairman; and

(5) three members shall be appointed by the Governor with the advice and consent of the Senate, who are licensed under this Act, who have been engaged for a period of five consecutive years as a private investigator, private guard, or as a law enforcement officer for any city, county, or state government, or for the federal government, and who are not employed by the same person or agency as any other member of the board. Persons initially appointed to the board under the provisions of this subsection shall meet the qualifications required of applicants under the provisions of Section 3 of this Act in lieu of being licensed.

#### Oath of Office

Sec. 6. (a) The members of the board appointed by the governor and confirmed by the Senate shall take the constitutional oath of office before an officer authorized to administer an oath within this state.

(b) Upon presentation of the oath, together with the certificate of appointment, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members.

#### Terms of Office

Sec. 7. (a) Of these appointees, two shall be appointed for terms expiring January 31, 1973, two shall be appointed for terms expiring January 31, 1975, and two shall be appointed for terms expiring January 31, 1977. Each appointed member shall hold office until his successor is appointed and has qualified; such successors shall serve for six-year terms.

(b) The director of the Department of Public Safety and the attorney general, or their representatives, will serve on the board during their terms of office and shall perform the duties required of members of the board by this Act in addition to those duties required of them in other official capacities.

#### Vacancies

Sec. 8. The governor, with the advice and consent of the Senate, shall fill vacancies occurring among appointed members of the board with appointments for the duration of the unexpired term.

**Designated Representatives**

Sec. 9. (a) The Attorney General and the director of the Department of Public Safety may delegate to a personal representative from their respective offices the authority and duty to represent them on the board.

(b) The designated representative may exercise all of the powers, duties, and responsibilities of the member while engaged in the performance of official board business, but a member is responsible for the acts and decisions of his delegated representative.

**Compensation of Board Members**

Sec. 10. The members of the board shall serve without pay but shall be reimbursed for their necessary and actual expenses. The number of employees and the salaries of each shall be fixed in the General Appropriations Bill.

**Rules of Procedure and Seal**

Sec. 11. (a) The board has the power to make all necessary rules for its procedure.

(b) The board has a seal, the form of which it shall prescribe.

**Subpoenas; Oath; Refusal to Testify, Obey Subpoena or Give Evidence; Petition to Compel; Process and Hearing; Contempt**

Sec. 11A. (a) In the conduct of any investigation conducted under the provisions of this Act, the board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

(b) No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he is properly examined by the officer conducting the hearing. Any person called upon to testify or to produce papers upon any matter properly under inquiry by the board, who refuses to so testify or produce papers upon the ground that his testimony or the production of papers would incriminate him or tend to incriminate him, shall nevertheless be required to testify or to produce papers, but when so required under these objections he is not subject to indictment or prosecution for any transaction, matter, or thing concerning which he truthfully testifies or produces evidence.

(c) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the board, then the board may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the board, the court shall punish the witness for contempt.

**Organization and Meetings of the Board**

Sec. 12. (a) The board shall meet within 30 days after the effective date of this Act, and thereafter at regular intervals to be decided by a majority vote of the board.

(b) The board, including the representative of the director of the Department of Public Safety if he so designates one, shall elect from among its members a vice-chairman, and secretary to serve two-year terms commencing on September 1, of each odd-numbered year. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board and perform the other duties prescribed in this Act.

(c) A majority of the board constitutes a quorum to transact business.

(d) At the first meeting, the board shall specify the date and place of the first examinations for licenses to be held.

**SUBCHAPTER C. LICENSES**

**License Required and False Representation Prohibited**

Sec. 13. (a) It shall be unlawful and punishable as provided in Section 45 of this Act for any person to engage in the business of, or perform any service as, a private detective, private investigator or private patrol operator or to offer his services in such capacities unless he is licensed under the provisions of this Act.

(b) It is unlawful and punishable as provided in Section 45 of this Act for any person to represent falsely that he is employed by a licensee.

**Exceptions**

Sec. 14. (a) This Act does not apply to

(1) a person employed exclusively and regularly by one employer in connection with the affairs of an employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America, or of this State or a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) a person or firm engaged exclusively in the business of obtaining and furnishing information in relation to the financial rating of persons;

(4) an attorney-at-law in performing his duties;

(5) admitted insurers, agents, and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them;

(6) the legal owner of personal property which has been sold under a conditional sales agreement or a mortgage;

(7) a person receiving compensation for private employment on an individual, independent contractor basis as a patrolman, guard, or watchman who has full time employment as a peace officer as defined by Article 2.12 of the Texas Code of Criminal

Procedure, as amended, and further provided, that for such exemption to operate the peace officer so defined shall (a) be employed in an employee-employer relationship, (b) on an individual contractual basis and (c) not be in the employ of another peace officer.

(b) The provisions of this Act do not prevent the local authorities of any city, county, or city and county, by ordinance and within the exercise of the police power of the city, county, or city and county, from imposing local regulations upon any street patrol special officer or upon any person who furnishes street patrol service or street patrol special officer, to require registration with an agency to be designated by the city, county, or city and county, including in the registration full information as to the identification and employment of the individual.

(c) The city, county, or city and county may issue the employee of a licensee who is licensed under Class B or C license, a special police commission as provided for in Article 484 of the Texas Penal Code, provided that such employee of the licensee is employed as a special officer or special street patrol officer of the licensee and meets the requirements to be commissioned as such. The city, county, or city and county may require the said applicant for the special officer's commission to register with them, and include in such registration as to the identification and employment of the individual.

(d) No special police commission shall be issued to any person that is under 21 years of age, who is a convicted felon, or to a person who has committed any act, which if committed by a licensee, would be grounds for suspension or revocation of the license under this Act.

(e) A fee not to be in excess of \$50.00 per company plus \$10.00 per commission.

#### Application and Examination

Sec. 15. (a) An application for a license under this Act shall be in the form prescribed by the board. The application shall include:

- (1) full name and business address of the applicant;
- (2) name under which the applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification under which the applicant desires to be qualified;
- (5) the full name and residence address of each of its partners, officers, and directors, and its manager, if the applicant is an entity other than an individual;
- (6) two recent photographs of the applicant, of a type prescribed by the board;
- (7) two classifiable sets of fingerprints;

(8) a verified statement of his experience qualifications;

(9) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application; and

(10) any other information, evidence, statements, or documents as may be required by the board.

(11) An application for a license under this Act shall include the Social Security number of the one making application.

(b) The board may require an applicant or his manager to demonstrate qualifications by a written or an oral examination, or a combination of both, to be determined by the board.

(c) Payment of the application fee prescribed by this Act entitles the applicant or his manager to one examination without further charge. If the person fails to pass the examination he shall not be eligible for any subsequent examination except upon payment of the reexamination fee prescribed in this Act for each subsequent examination.

#### Classification of License

Sec. 16. (a) No person may engage in any operation outside the scope of his license.

(b) For the purpose of defining the scope of licenses, the following license classifications are established:

(1) Class A: the private investigator license, covering operations as defined in Section 2 of this Act;

(2) Class B: all business defined in Subchapter A, Section 2(2); alarm signal companies, watchmen, guards, patrol, courier service, armored car service, guard dog service;

(3) Class C: covering the operations included within Class A and Class B, as defined in Section 2 of this Act.

(c) A person licensed as a private patrol operator only may not make any investigation except as incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property which he has been hired or engaged to protect, guard, or watch.

#### Fees

Sec. 17. (a) The fee for a Class A original license is \$150; for the renewal of a Class A license, the fee is \$100.

(b) The fee for a Class B original license is \$150; for the renewal of a Class B license, the fee is \$100.

(c) The fee for a Class C original license is \$225; for the renewal of a Class C license, the fee is \$175.

(d) A delinquency fee shall be for not less than \$10, nor more than \$25.

(e) The fee for a Branch Office License as defined under this Act shall be \$50; for the renewal of a Branch Office License, the fee is \$50.

(f) All fees and moneys collected under this Act shall be deposited in the Treasury of the State of Texas.

Denial of License

Sec. 18. After a hearing the board may deny a license unless the applicant makes a showing satisfactory to the board that the applicant, if an individual, has not, or if the applicant is a person other than an individual, that its manager and each of its officers, directors, and partners have not

(1) committed any act constituting dishonesty or fraud;

(2) committed any act, which, if committed by a licensee, would be a ground for the suspension or revocation of a license under this Act;

(3) committed any act resulting in conviction of a felony or a crime involving moral turpitude;

(4) a bad moral character, intemperate habits, or a bad reputation for truth, honesty, and integrity;

(5) been refused a license under this Act or had a license revoked;

(6) been an officer, director, partner, or manager of any person who has been refused a license under this Act or whose license has been revoked;

(7) while unlicensed, committed or aided and abetted the commission of any act for which a license is required by this Act; or

(8) knowingly made any false statements in his application.

Requirements for a Manager

Sec. 19. (a) The business of each licensee shall be operated under the direction, control, charge, or management, in the State, of either the licensee or a member, but no licensee shall employ more than one manager.

(b) No person shall act as a manager of a licensee until he has complied with each of the following:

(1) demonstrated his qualifications by a written or oral examination, or a combination of both, if required by the board;

(2) made a satisfactory showing to the board that he has the qualifications prescribed by Section 3 and that none of the facts stated in Section 18 exist as to him.

(c) If the manager, who has qualified as provided in this section, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the board in writing 14 days from such cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the board.

pending the qualifications as provided in this Act, of another manager. If the licensee fails to notify the board within the 14-day period, his license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, if any be due, and the qualification of a manager as provided in this Act.

(d) When the individual on the basis of whose qualifications a license under this Act has been obtained ceases to be connected with the licensee for any reason whatsoever, the business may be carried on for such temporary period and under such terms and conditions as the board shall provide by regulation.

Revocation of License

Sec. 20. (a) The board may suspend or revoke a license issued under this Act if it determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager has

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this Act;

(3) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying or possessing a dangerous weapon;

(4) violated any rule of the board adopted pursuant to the authority contained in this Act;

(5) impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or of any political subdivision of either;

(6) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(7) committed or permitted any employee to commit any act, while the license was expired, which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license;

(8) knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(9) acted as a runner or capper for any attorney; or

(10) committed any act which is a ground for denial of an application for license under this Act.

(b) The board may suspend or revoke a license issued under this Act if it determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, partners, or

its manager, knowingly employed, or has in his employment any person who

(1) has committed any act, which, if committed by a licensee, would be grounds for suspension or revocation of a license under this Act;

(2) has been convicted of a felony or any crime involving moral turpitude;

(3) has a bad moral character, intemperate habits, or a bad reputation for truth, honesty, and integrity.

(c) The board may suspend or revoke a license issued under this Act if it determines that the licensee or his manager, if an individual, or any of the officers, directors, partners, or the manager if the licensee is other than an individual, has

(1) used any letterhead, advertisement, or other printed matter, or in any manner illegally represented that he is an instrumentality of the federal government, state, or a political subdivision of either; or

(2) used a name different from that under which he is currently licensed on any advertisement, solicitation, or contract for business.

(d) The board may suspend or revoke a license issued under this Act if it determines that the licensee or his manager, if an individual, or any of the officers, directors, partners, manager, or other employee, if the licensee is a person other than an individual, has committed any act in the course of the licensee's business constituting dishonesty or fraud.

(e) "Dishonesty or fraud" as used in this section, includes

(1) knowingly making a false statement relating to evidence or information obtained in the course of employment, or knowingly publishing a slander or a libel in the course of a business;

(2) manufacture of evidence; or

(3) acceptance of employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of his employment by such client or former client.

#### Evidence of Conviction

Sec. 21. The record of conviction, or a certified copy, shall be conclusive evidence of a conviction as that term is used in this Act.

#### Suspension of License Due to Mental Illness

Sec. 22. (a) The adjudication of insanity or mental illness or the voluntary commitment or admission to a state hospital or other mental hospital of any licensee for a mental illness shall operate as a suspension of the right to practice of any licensee under this Act. The suspension continues until restoration to or declaration of sanity or mental competence.

(b) The record of adjudication, judgment or order of voluntary commitment is conclusive

evidence of such insanity or mental illness, and upon receipt of a certified copy of any such adjudication, judgment, voluntary commitment, or order by the board, the board shall immediately suspend the license of the person adjudicated or committed.

(c) The board shall not restore such licensee to good standing until it is satisfied that, with due regard for the public interest, said person's right to practice may be safely reinstated, provided, that in the case of a voluntary commitment to a state hospital or other mental hospital, receipt of a certificate of discharge from such hospital and the certificate of the superintendent of the hospital that the licensee is restored to mental competency, shall constitute competent evidence of restoration to sanity. Before reinstating the person, the board may require the person to pass an oral examination to determine his present fitness to resume his practice.

#### Form of Licenses

Sec. 23. The license, when issued, shall be in the form prescribed by the board, and shall include

(1) the name of the licensee;

(2) the name under which the licensee is to operate; and

(3) the number and date of the license.

#### Posting

Sec. 24. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

#### Pocket Cards

Sec. 25. Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the board shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed pursuant to this Act. When any person to whom a card is issued terminates his position, office or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the board for cancellation.

#### Change of Address and New Officers

Sec. 26. A licensee shall within 14 days after such change, notify the board of any and all changes of his address, of the name under which he does business and of any changes in its officers or partners.

Applications, on forms prescribed by the board, shall be submitted by all new officers or partners. The board may suspend or revoke a license issued under this Act if they determine that at the time the person became an officer or partner of a licensee, any of the facts in Section 20 existed as to such person.

#### License Not Assignable

Sec. 27. A license issued under this Act is not assignable.

**Licensee Responsible for Conduct of Employees**

Sec. 28. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

**Divulgence of Information**

Sec. 29. (a) Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(d) No licensee, or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

**Employee Records**

Sec. 30. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the board.

**Advertisements**

Sec. 31. Every advertisement by a licensee soliciting or advertising business shall contain his company name and address and license number as they appear in the records of the board.

**Branch Offices**

Sec. 32. (a) Each licensee shall file in writing with the board the address of each branch office, and within 14 days after the establishment, closing, or changing of location of a branch office shall notify the board in writing of such fact.

(b) Upon application of a licensee the board shall issue a branch office license. The fee for a branch office license shall be \$50; the fee for renewal for such license shall be \$50.

(c) The board may prescribe credentials to be issued to a branch office manager of a licensee under all three categories of a license as described in Section 16, Chapter 610, Acts of the 61st Legislature, 1969.

**Registration of Employees or Private Investigators**

Sec. 33. (a) Except as otherwise provided in this Act, every employee of a licensee shall be registered with the board in the manner prescribed by this Act.

(b) Every person in the employ of a licensee on the effective date of this Act shall file with the board an application for registration within 14 days after such effective date.

(c) Every person entering the employ of a licensee after the effective date of this Act shall file with the board an application for registration within 14 days after the commencement of such employment.

(d) The application for registration under this Act shall be on a form prescribed by the board and shall be accompanied by the fee provided for in this Act.

(e) The minimum age for persons registered under this Act shall be 18.

**Application; Verification; Contents**

Sec. 34. The application shall be verified and shall include:

(a) The full name, residence address, residence telephone number, date and place of birth, and the Social Security number of the employee.

(b) A statement listing any and all names used by the employee, other than the name by which he is currently known, together with an explanation setting forth the place or places where each name was used, the date or dates of each use and a full explanation of the reasons why each such name was used. If the employee has never used a name other than that by which he is currently known, this fact will be set forth in the statement.

(c) The name and address of the employer and the date the employment commenced. A letter from the licensee requesting that the said investigator be registered under his license.

(d) The title of the position occupied by the employee and a description of his duties.

(e) Two recent photographs of the employee, of a type described by the board, and two classifiable sets of his fingerprints.

(f) A letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application.

(g) Such other information, evidence, statements, or documents, as may be required by the board.

**Managers; Exemption from Registration Under Certain Sections**

Sec. 35. Managers who are duly registered under other provisions of this Act shall not be required to register under Sections 33 and 34 of this Act.

**Employees Exempt from Registration**

Sec. 36. Notwithstanding any other provision of this Act, employees of a licensee who are employed exclusively as undercover agents (as those words are generally understood in the industry and defined under Section 2 of this Act) or in the stenographic, typing, filing, clerical, private patrol, private guard, or other activities which do not constitute the work of a private investigator as described in this Act, unless such employee is the branch office manager, shall not be required to register under this Act with the board.

**Grounds for Suspension, Revocation or Refusal of Registration**

Sec. 37. After a hearing the board may refuse to register any employee, or may suspend or revoke a previous registration, if the individual has committed any act which, if committed by a licensee, would be grounds for refusing to issue a license, or for the suspension or revocation of a license under this Act.

**Pocket Card**

Sec. 38. Upon completion of registration the board shall issue to the registered employee a suitable pocket card. The exhibition of this card to the licensee shall be considered as prima facie evidence that the person is registered by the board, under that Licensee's License number.

**Termination of Employment; Surrender of Registration Card; Letter from Licensee; Change of Address Notice**

Sec. 39. Each person registered under this Act whose employment has been terminated with the licensee shall immediately surrender registration card to the licensee, and the licensee shall surrender same within seven days thereafter to the board for cancellation, along with a letter from the licensee stating that the said registered employee was terminated and for what cause. The licensee shall notify the board in writing within seven days after any change in the resident address of a registered employee.

**Registration Fee**

Sec. 40. The registration fee for employees of licensees required by this Act shall be fixed by the board at not more than \$5 nor less than \$3.

**Bonds Filed for License**

Sec. 41. No license shall be issued under this Act unless the applicant files with the board a surety bond executed by a surety company authorized to do business in this State in the sum of Ten Thousand Dollars (\$10,000) conditioned to recover against the principal, its servants, officers, agents and employees by reason of its wrongful or illegal acts in conducting such business licensed under this Act, or have on file with the Secretary of State of the State of Texas, a foreign corporation bond to do business in the State of Texas under Article 1302-3.04, Texas Miscellaneous Corpora-

tion Laws Act; the board may require a copy of said bond to be on file in their office. No corporation shall be required to post more than one such bond.

**Action on Bonds to Recover Damages**

Sec. 42. The bond required by this Act shall be made payable to the State of Texas, and anyone so injured by the principal, its servants, officers, agents and employees, shall have the right and be permitted to sue directly upon this obligation in their own names, and this obligation shall be subject to successive suits for recovery until complete exhaustion of the face amount hereof.

**Suspension for Failure to File Surety Bond**

Sec. 43. (a) Every licensee shall at all times maintain on file with the board the surety bond required by this Act in full force and effect and upon failure to do so, the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefor, in the form prescribed by the board, is filed together with a proper bond.

(b) The board may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond in force, for which a license under this Act is required.

(c) Bonds executed and filed with the board pursuant to this Act shall remain in force and effect until the surety has terminated future liability by a 30-day notice to the board.

**Cash Deposited in Lieu of Surety Bond**

Sec. 44. The sum of \$10,000 in cash may be deposited with the State of Texas, in lieu of the surety bond required by this Act.

**SUBCHAPTER D. ENFORCEMENT PROVISIONS****Penal Provisions**

Sec. 45. Any person who knowingly falsifies the fingerprints or photographs submitted under Subsections (6) and (7) of Section 15, is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years. Any person who violates any of the other provisions of this Act is guilty of a misdemeanor punishable by fine not to exceed \$500 or by imprisonment in the county jail not to exceed one year, or both.

**Expiration and Renewal of License and Registration Card**

Sec. 46. (a) Licenses issued under this Act and the pocket cards issued pursuant thereto, shall expire at 12 p. m. on December 31, 1970, and thereafter at 12 p. m. on December 31 of each succeeding year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which



it would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this Act. On renewal, a renewal license and renewal pocket cards for persons mentioned in Section 16, shall be issued to the licensee.

(b) Renewal of a license shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

(c) Licensees shall apply for renewal from November 1st to December 1st of each year.

**Expiration Dates of Licenses; Proration of Fees**

Sec. 46A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on December 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

**Activity During Suspension of License**

Sec. 47. A suspended license is subject to expiration and shall be renewed as provided in this Act, but such renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order of judgment by which the license was suspended.

**Reinstatement of a Revoked License**

Sec. 48. A revoked license is subject to expiration as provided in this Act, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

**Expiration of Licenses and New Licenses**

Sec. 49. (a) A license which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

(b) The holder of the license may obtain a new license only on compliance with all of the provisions of this Act relating to the issuance of an original license.

**Appeals**

Sec. 50. Any person aggrieved by any action of the Board in denying an application for a license, or in revoking a license, or in suspending a license, or in taking any disciplinary action with respect to a license under this Act, shall have the right to appeal such action or such decision to the District Court of the county of his residence, and the filing of such appeal in the District Court shall stay the effect

of such action or decision until decided by the court. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from Justice of the Peace Courts to County Courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this section. If this section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect.

**Severability Clause**

Sec. 51. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1969, 61st Leg., p. 1807, ch. 610, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23; eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 280, ch. 130, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 627, ch. 266, § 17, eff. June 11, 1973.]

Section 24 of the 1971 amendatory act provided: "If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable."

**Art. 4413(29cc). Polygraph Examiners Act**  
**Short Title**

Sec. 1. This Act shall be known, and may be cited, as the Polygraph Examiners Act.

**Purpose**

Sec. 2. It is the purpose of this Act to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation (as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this Act shall be liberally construed to

regulate all such persons and instruments. No person who purports to be able to detect deception or to verify truth of statements through instrumentation shall be held exempt from the provisions of this Act because of the terminology which he may use to refer to himself, to his instrument, or to his services.

#### Definitions

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

(1) "board" means the Polygraph Examiners Board;

(2) "secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary;

(3) "internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship;

(4) "person" means any natural person, firm, association, copartnership, or corporation; and

(5) "polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device.

#### Minimum Instrumentation Required

Sec. 4. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

#### Creation of the Board

Sec. 5. (a) There is hereby established in the Engineering Extension Service, Police Training Division, Texas A & M University System, a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment, all of whom shall have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. No two board members may be employed by the same person or agency. At least two members must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph

section of the Department of Public Safety, and at least two members must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. The terms of office of members appointed to the initial board are two for two years; two for four years; and two for six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term.

(b) The number of employees and the salaries of each, including travel and expense allowance of the members of the Board shall be as fixed in the General Appropriation Bill.

(c) The board shall meet within 30 days after the effective date of this Act and elect a chairman, vice-chairman, and secretary from among its members. At the meeting, the board shall specify dates spaced at three month intervals on which examinations for polygraph examiners' licenses will be held. A copy of those dates shall forthwith be delivered to the secretary.

(d) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

#### Administration and Expenses

Sec. 6. (a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members, and that the board members are fully qualified to act.

(c) All fees collected under the provisions of this Act shall be paid to the Treasurer of the State of Texas. Funds necessary for the enforcement of this Act and the administration of its provisions shall be appropriated by the Legislature, but the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during such biennium.

#### Unauthorized Practice

Sec. 7. It shall be unlawful for any person, including a city, county or state employee, to administer polygraph or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate or which is intended to indicate or calculated to mislead members of the public into believing that he is qualified to apply instrumentation to detect deception or to verify truth of statements without first securing a license as herein provided.

**Examiner's License Qualifications**

Sec. 8. A person is qualified to receive a license as an examiner

- (1) who is at least 21 years of age; and
- (2) who is a citizen of the United States; and
- (3) who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness; and
- (4) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and
- (5) who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and
- (6) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and
- (7) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(8) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

**Acquisition of License by Present Examiners**

Sec. 9. On the effective date of this Act, any person who held a license issued by the Board established or attempted to be established by Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, and whose license was in effect on the date on which said Act was held invalid, shall be automatically licensed hereunder until such date as his license under the Act aforesaid has expired and thereafter may renew his license on payment of the fee herein provided. The applicant must also satisfy the provisions of Section 8(8) of this Act.

**Applications for Original License**

Sec. 10. Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as

in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

**Non-Resident Applicants**

Sec. 11. (a) Each non-resident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the secretary. Such consent shall stipulate and agree that such service or process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Non-resident applicants must satisfy the requirements of Section 8 of this Act.

**Applicant with Out-of-State License**

Sec. 12. An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of a fee of \$60 and the production of satisfactory proof that

- (1) he is at least 21 years of age; and
- (2) he is a citizen of the United States; and
- (3) he is of good moral character; and
- (4) the requirements for the licensing of polygraph examiner in such particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state; and
- (5) the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder; and
- (6) such other state or territory grants similar reciprocity to license holders of this state; and
- (7) he has complied with Section 11 of this Act.

**Internship License**

Sec. 13. (a) Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such license and pays the required fee within ten days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of 12 months from the date of issue.

Such license may be extended or renewed for any term not to exceed 6 months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original 12 month period and 6 month extension, if such extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

#### Examination and License Fees

Sec. 14. (a) The fee to be paid by an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$20, which is not to be credited as payment against the license fee.

(b) The fee to be paid for an original polygraph examiner's license is \$60.

(c) The fee to be paid for an internship license is \$30.

(d) The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$10.

(e) The fee to be paid for a polygraph examiner's renewal license is \$25.

(f) The fee to be paid for the extension or renewal of an internship license is \$25.

(g) The fee to be paid for a duplicate internship license is \$10.

(h) The fees required by this Act may be paid by the governmental agency employing the examiner.

#### Display of License and Signature Thereon

Sec. 15. A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

#### Change of Business Address

Sec. 16. Notice in writing shall be given to the secretary by the licensed examiner of any change of principal business location within 30 days of the time he changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

#### Termination and Renewal of Examiner's License

Sec. 17. Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within two years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying Section 8(2), (3), and (4). However, any polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the mili-

tary service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. Section 8(2), (3), and (4) of this Act must also be satisfied.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 17A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date in effect at the time the rule is adopted shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

#### License Required to Maintain Suit

Sec. 18. No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this Act, or to recover the agreed price or any compensation under such agreement, or for such services for which a license is required by this Act without alleging and proving that such person had a valid license at the time of making such agreement or performing such services.

#### Refusal, Suspension, Revocation—Grounds

Sec. 19. The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(1) for failing to inform a subject to be examined as to the nature of the examination;

(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

(3) material misstatement in the application for original license or in the application for any renewal license under this Act;

(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

(6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

(8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

(9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto;

(10) where the license holder has been adjudged as habitual drunkard or mentally incompetent as provided in the Probate Code;

(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act; or

(12) failing to inform the subject of the results of the examination if so requested.

**Violation by One Examiner or Trainee Not To Affect Employer**

Sec. 20. Any unlawful act or violation of any of the provisions of this Act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has wilfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

**Registration of Examiners With County Clerks**

Sec. 21. Each polygraph examiner shall register with the county clerk in the county wherein he maintains a business address. The county clerk of each county shall maintain a list of all polygraph examiners registered in his county.

**Board Hearing**

Sec. 22. (a) When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20 day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held

less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

**Judicial Review**

Sec. 23. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of Travis County, Texas. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this section. If this section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect.

**Surrender of License**

Sec. 24. Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary; failure of a licensee to do so shall be a violation of this Act and upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation

of any license, the secretary shall restore it to the former licensee, upon the written recommendations of the board.

#### Proceedings Through the Attorney General

Sec. 25. If any person violates any provisions of this Act, the secretary shall, upon direction of a majority of the board, in the name of the State of Texas, through the Attorney General of the State of Texas, apply in any district court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this Act, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this Act, the court, or any judge thereof, may enter a decree perpetually enjoining the violation or enforcing compliance with this Act. In case of violation of any order or decree issued under the provisions of this Section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceeding under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

#### Penalties

Sec. 26. Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

#### Admissibility of Results as Evidence

Sec. 27. Nothing in this Act shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of law.

#### Validating Clause

Sec. 28. All acts and governmental proceedings performed by the Polygraph Examiners Board and its officers since the creation or attempted creation of such Board by Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, are hereby in all respects validated as of the date of such acts or proceedings.

#### Savings Clause

Sec. 29. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provisions to other persons or circumstance shall not be affected thereby.

#### Emergency Clause

Sec. 30. The fact that Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, has been held by the Texas Supreme Court to be invalid solely because of a defect in the caption to the bill and that this state will have no law licensing and regulating the use of lie detection or polygraph examination techniques and instruments by reason of said decision, and that untrained and unlicensed examiners, and examiners using inadequate techniques and equipment cause great harm to the general public, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted.

[Acts 1969, 61st Leg., p. 2504, ch. 839, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 628, ch. 266, § 23, eff. June 11, 1973.]

Acts 1965, 59th Leg., p. 888, ch. 441 enacted a polygraph examiners act, classified as article 2615f-2. Said Act was held unconstitutional by Fletcher v. State (Sup. 1969) 439 S.W.2d 656, on ground of insufficiency of the title of the Act under Const. art. 3, § 35.

Acts 1969, 61st Leg., p. 2504, ch. 839 was editorially classified as article 2615f-3 and subsequently re-classified as this article.

### CHAPTER SIX. VETERANS' PREFERENCES

#### Article

4413(30). Repealed.

4413(31). Preference of Veterans in Appointment or Employment.

#### Art. 4413(30). Repealed by Acts 1945, 49th Leg., p. 627, ch. 357, § 8

This article was derived from Acts 1939, 46th Leg. p. 617, and related to preference of veterans in appointment or employment. The subject is now covered by art. 4413(31).

#### Art. 4413(31). Preference of Veterans in Appointment or Employment

##### Persons Entitled to Preference

Sec. 1. From and after the effective date of this Act, in every public department, commission, board, and government agency, and upon all public works of this State, all honorably discharged soldiers, sailors, marines, members of the air corps and coast guard of the United States, nurses in military service of the United States; and all women in military service of the United States in the different auxiliary services thereof, in the Spanish-American War, Philippine Insurrection, China Relief Expedition, World War I and World War II, or in any other military conflict in which the United States of America has been a participant, or the war in Korea after June 24, 1950, or the Viet Nam conflict after July, 1953, and the widows and orphans of such personnel of the Armed Forces of the United States, who are and have been citizens of Texas for not less than five (5) years preceding the date of application in pursuance of this Act, and are competent and fully qualified, shall be entitled to preference in appointment or employment over other applicants for the same position having

no greater qualification; provided, that this Act shall not apply or benefit any person who was a conscientious objector at the time of his or her discharge from any of the military services herein mentioned.

#### Percentage of Employees Entitled to Preference

Sec. 2. The person or persons whose duty it is or may be to appoint or employ persons for or on behalf of the public departments, commissions, boards and other governmental agencies and public works as set out in Section 1 hereof, shall ascertain the number of employees therein and shall give preference to persons entitled thereto under and in accordance with this Act, to the extent that not less than forty per cent (40%) of the total number of employees so employed shall be selected from those by this Act given preference; provided, however, that on and after the effective date of this Act, those public departments, commissions, boards and other governmental agencies and public works of this State which do not have a forty per cent (40%) quota as herein prescribed, shall, upon replacing employees in vacancies existing give preference to persons granted preference hereby, until such time as it or they shall have reached the prescribed total of forty per cent (40%); provided, however, that not less than twenty-five per cent (25%) of said employees hereby given preference shall be so employed not later than January 1, 1947, and not less than the full forty per cent (40%) by January 1, 1948; provided further, however, that wherever possible ten per cent (10%) of those given preference under this Act shall be taken from those veterans who have been discharged from the armed services of the United States within the preceding eighteen (18) months.

#### Age or Service-Connected Disability as Affecting Rights

Sec. 3. Persons entitled to preference under this Act shall not be disqualified from holding any position or employment hereinbefore mentioned on account of age or by reason of any service-connected disability, provided such age or disability does not render him or her incompetent to properly and capably perform the duties of the position or employment applied for. In all public departments, commissions, boards and other governmental agencies and public works of this State which now require or may hereafter require a competitive examination under a Merit System or Civil Service Plan of either or both selecting and promoting employees, such person who is otherwise eligible and qualified for and entitled to preference under this Act, who shall have been so examined and shall have attained at least the minimum required score for such test or tests, shall have a service credit amounting to ten (10) points added to the earned rating, and a service credit amounting to five (5) additional points shall be added to the earned rating of each such person who has a service-connected disability which has been or may be established by official records, which records such disa-

bled person shall furnish to the person or persons whose duty it is to fill the position or employment applied for. In any public departments, commissions, boards, governmental agencies and public works of this State where competitive examinations for such purposes are not now or hereafter held, those entitled to preference under this Act having such service-connected disability so to be established and proof of the existence thereof furnished as hereinbefore provided, shall be entitled to preference for employment or appointment over all other applicants for the same position without any such disability and having no greater qualifications.

#### Veterans Receiving Military Retirement Pay; Inapplicability of Act

Sec. 3(a). The veteran's preference authorized under this Act shall not apply to veterans who are receiving or who are entitled to receive military retirement pay, other than disability retirement pay, from the United States of America.

#### Investigation as to Qualifications

Sec. 4. When any person entitled to preference under Section 1 of this Act shall apply for appointment or employment under this Act, the officer, executive head of the department or person or persons whose duty it is to appoint or employ some person to fill the position or employment applied for, shall, before appointing or employing any one to fill such position or employment, make an investigation as to the qualifications of such applicant for such position or employment, and if the applicant is a person of good moral character, and can perform the duties of the position or employment applied for as hereinabove provided, such officer, head of department, or other person or persons having the appointive duty and power shall appoint or employ the applicant to such position or employment. Provided, however, that the provision of this Section shall not be operative if the said department, board, commission, governmental agency or public works shall have in its employment at the time the percentage required under Section 2 hereof of those entitled to preference under this Act.

#### Federal Grants

Sec. 5. If any provision of this Act shall be found to be in conflict with the Federal Laws, or any limitations fixed by Federal grants of funds to the public departments or governmental agencies, this Act shall be so construed as to operate to the extent only with reference to such Federal grants as it may be found to be in harmony therewith, and shall be in force with reference to said funds, to the extent of its harmonious provisions, and no further.

#### Inapplicable to Certain Positions

Sec. 6. Nothing in this Act shall be construed to apply to the position of private secretary or deputy of any official or department or to any person holding a strictly confidential relation to the appointing or employing officer.

**Partial Invalidity**

Sec. 7. If any section, subsection or paragraph hereof be held unconstitutional or invalid for any reason, it shall be presumed that this Act would have been passed by the Legislature without such invalid section, subsection, paragraph, sentence, provision, clause or phrase and such holding shall not in any way affect the remainder of the Act.

**Repeal; Act as Cumulative**

Sec. 8. Senate Bill No. 190, Chapter 1 of the Acts of the Forty-sixth Legislature, 1939, Regular Session, is hereby repealed.<sup>1</sup> The provisions of this Act shall be cumulative of all laws on this subject, and whenever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof in so far as same are in conflict with any existing law or laws, shall govern and control.

[Acts 1945, 49th Leg., p. 627, ch. 357; Acts 1951, 52nd Leg., p. 374, ch. 238, § 1; Acts 1967, 60th Leg., p. 712, ch. 295, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1185, ch. 284, §§ 1, 2, eff. Aug. 30, 1971.]

<sup>1</sup> Article 4413(30).

## CHAPTER SEVEN. INTERGOVERNMENTAL COOPERATION

**Article**

- 4413(32). Interagency Cooperation Act.
- 4413(32a). Interagency Planning Councils.
- 4413(32b). Intergovernmental Cooperation Act.
- 4413(32c). Interlocal Cooperation Act.
- 4413(32d). Cultural Basin Act of 1973.

### Art. 4413(32). Interagency Cooperation Act

**Short Title**

Sec. 1. This Act may be referred to as "The Interagency Cooperation Act."

**Agency Defined**

Sec. 2. When used in this Act the word "agency" includes department, board, bureau, commission, court, office, authority, council, institution, university, college, and any service or part of a State institution of higher education.

**Authority to Contract to Furnish Services; Reimbursement of Cost**

Sec. 3. Any state agency may enter into and perform a written agreement or contract with other agencies of the state for furnishing necessary and authorized special or technical services, including the services of employees, the services of materials, or the services of equipment. The actual cost of rendering the services, or the nearest estimate of the cost that is practicable, shall be reimbursed, except in case of service rendered in the fields of national defense or disaster relief, or in cooperative efforts, proposed by the Governor, to promote the economic development of the state. Provided, however, nothing herein shall authorize any agency to construct any highway, street, road, or other building or structure for any other agency, except as otherwise specifically authorized by existing law, and, except as

to the right of the Texas Highway Department to enter into interagency agreements with any state college or university or public junior colleges providing for the maintenance, improvement, relocation or extension of existing on-campus streets, parking lots and access-ways. Provided, however, no agency shall supply any services, supplies, or materials to another agency which are required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

**Written Agreement or Contract**

Sec. 4. Before any services may be rendered or received, a written agreement or contract shall be entered into, specifying the kinds and amounts of services to be rendered, the bases for calculating reimbursable costs, and the maximum amount of the costs during the time period covered by the agreement. In emergency situations for the defense or safety of the civil population, or in planning and preparation therefor, or in cooperative efforts, proposed by the Governor, for the economic development of the State, or where the amount involved is less than Twenty-five Dollars (\$25), no written contract or advance approval by the Board of Control is required. To be valid, the written agreement or contract must have the advance approval of the administrator of the State agencies which are parties thereto, and of the Board of Control.

**Restrictions on Contracts; Review by Board of Control**

Sec. 5. No agreement or contract may be entered into or performed which will require or permit an agency of the State to exceed its constitutional or statutory duties and responsibilities, or the limitations of its appropriated funds. In reviewing proposed agreements or contracts of the character described in this Act, the Board of Control is authorized and directed to consider the following factors, which shall not be construed to be exclusive:

(a) Whether the services specified are necessary and essential for activities and work that are properly within the statutory functions and programs of the affected agencies of the State Government;

(b) Whether the proposed arrangements serve the interests of efficient and economical administration of the State Government; and

(c) Whether the specified bases for reimbursing actual costs are fair, equitable, and realistic and in conformity with the limitations of funds prescribed in the current appropriations act or other applicable statutes.

**Payments**

Sec. 6. Payments for such services by a receiving agency shall be made from the appropriation items or accounts of the receiving agency from which like expenditures would normally be made, based upon vouchers drawn for this purpose by the receiving agency pay-



able to the furnishing agency. Payments received by the State agency performing the services shall be credited to that State agency's current appropriation items or accounts from which the expenditures of that character were originally made. Payments for intra-agency transactions shall be handled in the same manner as interagency transactions or by interdivisional transfer of funds on the records of the agency concerned, subject to the applicable provisions of the biennial appropriations act.

Summary Included in Board's Annual Report

Sec. 7. A summary of all such agreements or contracts entered into during any fiscal year by State departments or agencies and aggregating over One Hundred Dollars (\$100), including descriptions of the purposes of the agreements or contracts, names of the State agencies involved, time period covered, and amounts of reimbursement, shall be included in the Board of Control's annual report.

[Acts 1953, 53rd Leg., p. 841, ch. 340; Acts 1965, 59th Leg., p. 564, ch. 287, § 1.]

Art. 4413(32a). Interagency Planning Councils

Sec. 1. The imperative need to maximize the prudent use of governmental revenues being self-evident, the Legislature recognizes that planning is a governmental purpose and function of the State and its political and legal subdivisions.

Sec. 2. The Governor is hereby designated the Chief Planning Officer of the State.

Sec. 3. The Governor shall appoint Interagency Planning Councils to coordinate joint planning efforts in the various functional areas of government, and each Council shall be composed of a member of the Governor's Office and the Administrative heads of the several State agencies and departments and institutions of higher education represented on the respective Councils. The Interagency Planning Councils shall represent the areas of natural resources, health, education, and such other areas as may require coordinated planning efforts.

Sec. 4. The Governor shall establish a Division of Planning Coordination within his Office to coordinate the activities of the several Councils, and to serve as a coordinating catalyst by encouraging needed studies and planning efforts. The several Councils may participate jointly in studies providing information common to all planning efforts.

[Acts 1967, 60th Leg., p. 949, ch. 417, eff. Sept. 1, 1967.]

Section 5 of the act of 1967 provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable."

Art. 4413(32b). Intergovernmental Cooperation Act

Purpose

Sec. 1. It is the purpose of this Act to improve the coordination and cooperation between the State and its local governments and between the State and the federal government by:

(1) providing a means for continuous evaluation of the State's key role in the federal system;

(2) involving local, State, and federal officials in an advisory capacity to the public agencies of Texas;

(3) establishing a regular system of reporting to public officials on the progress of the State and its political subdivisions toward meeting intergovernmental responsibilities.

Short Title

Sec. 2. This Act may be cited as the Texas Intergovernmental Cooperation Act.

Definitions

Sec. 3. As used in this Act:

(1) "commission" means the Texas Advisory Commission on Intergovernmental Relations;

(2) "local government" means a county, a home rule city or a city, village, or town organized under the general laws of this State, a special district, a school district, a junior college district, any other legally constituted political subdivision of the State or a combination of political subdivisions.

Commission Created

Sec. 4. There is hereby created a Texas Advisory Commission on Intergovernmental Relations.

Members of the Commission

Sec. 5. The commission shall be composed of twenty-four members as follows: four county officials, four city officials, two public school officials, two representatives of other political subdivisions, two federal officials residing in Texas and responsible for federal programs operating in the State, and four private citizens all appointed by the Governor; three State Senators appointed by the Lieutenant Governor; and three State Representatives appointed by the Speaker of the House. Each of these public officials or employees appointed to the commission shall perform the duties of a member of the commission as additional duties required of him in his other official capacity.

Chairman

Sec. 6. The chairman of the commission shall be selected by the Governor and serve at his pleasure. In the event of the chairman's absence or disability, the members of the com-

mission shall elect a temporary chairman by majority vote of those present at a meeting.

**Terms of Office; Vacancies; Records**

Sec. 7. (a) Members of the commission shall hold office for staggered terms of six years, with the terms of eight members, including one Senator and one Representative, expiring on the first day of September in each odd-numbered year.

(b) Should a member appointed to represent the State, the federal government, a city, county, school district, or other political subdivision cease to be an officer or employee of the agency he is appointed to represent, his membership on the commission shall terminate and there will be a vacancy in the membership.

(c) If a vacancy occurs in the office of an appointed member of the commission, the position shall be filled by a person appointed in the same manner as for a regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and qualified.

(d) The official records of the commission shall reflect the date each member's certificate of appointment was issued by the Secretary of State, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

**Per Diem and Expenses**

Sec. 8. (a) A member of the commission is not entitled to a salary for duties performed as a member of the commission; but each member is entitled to \$25 each day he is in attendance at meetings or hearings or on authorized business of the commission, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business.

(b) Each member is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.

**Staff**

Sec. 9. The commission may employ an executive director and such other staff as necessary to carry out its functions and duties.

**Functions**

Sec. 10. The commission shall carry out the following functions and duties:

(1) evaluate on a continuous basis the interrelationships among Texas local, State, and federal government agencies and prepare studies and recommendations to improve these relationships;

(2) evaluate proposed and existing federal programs and assess their impact upon Texas;

(3) evaluate the State's role in assisting its political subdivisions to carry out public responsibilities and make recommendations for improvement;

4 West's Tex.Stats. & Codes—23

(4) serve as a forum for the discussion and resolution of serious intergovernmental problems;

(5) encourage, and where appropriate, coordinate studies relating to intergovernmental relations conducted by universities, State, federal and local agencies, and other research-oriented organizations.

**Reporting**

Sec. 11. The commission may issue reports of its findings and recommendations from time to time and shall issue annually a public report on its work.

**Finances**

Sec. 12. (a) The commission is authorized to apply for, contract for, receive, and expend for its purposes any appropriations or grants from the State of Texas, local government, the federal government, or any other source, public or private.

(b) Local governments are authorized to appropriate moneys to the commission to share in the cost of its operations.

**Severability Clause**

Sec. 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2703, ch. 881, eff. Aug. 30, 1971.]

**Art. 4413(32c). Interlocal Cooperation Act**

**Purpose**

Sec. 1. It is the purpose of this Act to improve the efficiency and effectiveness of local governments by authorizing the fullest possible range of intergovernmental contracting authority at the local level including contracts between counties and cities, between and among counties, between and among cities, between and among school districts, and between and among counties, cities, school districts, and other political subdivisions of the state, and agencies of the state.

**Short Title**

Sec. 2. This Act may be cited as The Interlocal Cooperation Act.

**Definitions**

Sec. 3. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the state; or a combination of political subdivisions.

(2) "governmental functions and services" means all or part of any function or

service included within the following general areas: police protection and detention services; fire protection; streets, roads, and drainage; public health and welfare; parks; recreation; library services; museum services; waste disposal; planning; engineering; administrative functions; and such other governmental functions which are of mutual concern to the contracting parties.

(3) "administrative functions" means functions normally associated with the routine operation of government such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair, and printing.

**Bicentennial Exposition; "Governmental Functions and Services" Defined**

Sec. 3A. For the purpose of providing facilities and services for celebration of the 200th anniversary of the founding of the United States of America, the term "governmental functions and services," as used in this Act, includes the planning, construction, and operation of a bicentennial exposition, which may include a convention center, a museum, a battleground, camping facilities, amusement areas, exhibits, transportation systems, and other facilities and services which are appropriate to the celebration. The exposition may be operated and maintained on a permanent basis.

**Authority to Make Interlocal Contracts and Agreements**

Sec. 4. (a) Any local government may contract or agree with one or more local governments to perform governmental functions and services under terms of this Act.

(b) The agreements or contracts may be for the purpose of studying the feasibility of contractual performance of any governmental functions or services or may be for the performance of any governmental functions or services which all parties to the contract are legally authorized to perform, provided such contracts or agreements shall be duly authorized by the governing body of each party to the contract or agreement. An interlocal contract or agreement shall state the purpose, terms, rights, objectives, duties, and responsibilities of the contracting parties. Interlocal contracts and agreements may be renewed annually and shall specify that the party or parties paying for the performance of governmental functions or services shall make payments therefor from current revenues available to the paying party.

(c) The authority of a political subdivision to perform a contractual service includes the authority to apply the rules, regulations, and ordinances of either the subdivision receiving the service or of the subdivision providing the service, whichever standard may be agreed upon by the contracting political subdivisions.

(d) The contracting parties to any interlocal contract or agreement shall have full authority

to create an administrative agency or designate an existing political subdivision for the supervision of performance of an interlocal contract or agreement and any administrative agency so created or political subdivision so designated shall have the authority to employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of any interlocal contract or agreement.

(e) The contracting parties to any interlocal contract or agreement shall have full authority to contract with state departments and agencies as defined in Article 4413(32), Vernon's Texas Civil Statutes. The contracting parties to interlocal contract or agreement shall have specific authority to contract with the Department of Corrections for the construction, operation and maintenance of a regional correctional facility provided that title to the land on which said facility is to be constructed is deeded to the Department of Corrections and provided further that a contract is executed by and between all the parties as to payment for the housing, maintenance and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the Department of Corrections.

(f) No person acting under an interlocal contract or agreement shall be deemed to be holding more than one office of honor, trust, or profit or more than one civil office of emolument.

(g) When governmental units enter a contract or agreement for the furnishing of fire protection services, any civil liability related to the furnishing of those services is the responsibility of the governmental unit which would be responsible for furnishing the services absent the contract or agreement.

**Water Supply and Waste Water Treatment Facility Contracts and Leases**

Sec. 5. (a) Any city, town, district, or river authority within the state may enter into a contract with any other city, town, district, or river authority created under the constitution and laws of this state for the purpose of obtaining or providing water supply or waste water treatment facilities or any interest therein. Any city, town, district, or river authority may also enter into a contract with any other city, town, district, or river authority for the leasing or operation of water supply facilities or waste water treatment facilities or any interest therein.

(b) Any contract authorized by this section may provide that the city, town, district, or river authority obtaining one of the services may not obtain these same services from any other source other than the city, town, district, or river authority with which it contracted except to the extent provided in the contract. If any such contract so provides, payments made thereunder shall be operating expenses of the contracting party's water supply system or

waste water treatment facilities, or both, as the case may be.

(c) Except as provided in Subsection (d) of this section, any contract entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid.

(d) No tax revenues shall be pledged to the payment of amounts agreed to be paid under any contract entered into under this section.

(e) This section is wholly sufficient authority for executing the contracts mentioned in it regardless of any restrictions or limitations contained in any other laws.

#### Saving Clause

Sec. 6. The enactment of this law shall not affect or impair any act done or right, obligation, or penalty existing before enactment of this law.

#### Cumulative Clause

Sec. 7. The provisions of this Act shall be cumulative of all other laws or parts of laws, general or special.

#### Severability Clause

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1971, ch. 513, eff. May 31, 1971; Acts 1973, 63rd Leg., p. 237, ch. 112, § 1, eff. May 18, 1973; Acts 1973, 63rd Leg., p. 1279, ch. 472, § 1, eff. June 14, 1973; Acts 1973, 63rd Leg., p. 1782, ch. 655, § 1, eff. Aug. 27, 1973.]

### Art. 4413(32d). Cultural Basin Act of 1973

#### Short Title

Sec. 1. This Act may be cited as the Cultural Basin Act of 1973.

#### Findings

Sec. 2. (a) The Legislature of the State of Texas finds that there is an immediate state interest in an efficient and comprehensive system of local, regional, basinwide, and statewide planning, goal-setting, and decision-making processes.

(b) The legislature finds that the problems and opportunities of the state are not accurately reflected by statewide averages. The diversity of the state and its people, their general well-being, and their quality of life varies tremendously.

(c) The legislature finds a need to form an alliance among local citizens and representatives of federal, state, and local government to focus energies, expertise, and funds into an effective mechanism for solving problems and developing opportunities with the appropriate

discretion to meet the diverse needs of all the residents of Texas.

(d) The legislature finds that the efforts by local, state, and federal governments remain fragmented and that current efforts must be orchestrated and redirected to insure that the goals and priority-setting processes are attuned to the needs of local entities and residents of the state.

#### Statement of Purpose

Sec. 3. It is the purpose of this Act to improve the quality of life for the residents of Texas by stimulating orderly economic and socially desirable development and conservation and utilization of the state's human and natural resources. The administrative structure provided by this Act is a partnership of local citizens, local governments, state agencies, and federal agencies and creates a vehicle of change broad enough to plan and operate inter-agency and intergovernmental programs and flexible enough to respond to locally determined needs.

#### Designation of Cultural Basins

Sec. 4. (a) The Governor of Texas is instructed to designate appropriate cultural basins within the State of Texas where

(1) there is a commonality within a geographic area, culturally, historically, and economically;

(2) areas within a county or counties within the proposed area are contiguous; and

(3) grouping of state planning regions can be utilized as building blocks for the formation of such cultural basins.

(b) The governor shall designate at least four cultural basins; however, no more than seven shall be designated to insure economies of scale. Each of three major metropolitan areas should be in separate commissions.

#### Formation of Commissions

Sec. 5. A commission shall be appointed in each cultural basin that is designated by the governor. Each commission shall hold quarterly meetings. Additional meetings may be called by a majority of its members or by the chairman at any time.

#### Membership of Commissions

Sec. 6. The membership of each cultural basin commission shall be appointed by the governor for a term of two years. Cultural basin commission membership shall consist of five local citizens, the chairman or president of each regional council of government within the particular cultural basin, six state agency heads who shall coordinate activities of the commission with all agencies of state government, and representatives of five federal agencies who shall coordinate activities of the commission with all agencies of the federal government.

## Functions of the Commission

Sec. 7. (a) In carrying out the purposes of this Act, each cultural basin commission shall have the following functions with respect to its cultural basin:

(1) to foster surveys and studies to provide data required for the preparation of specific plans and programs for the development of such cultural basins;

(2) to advise and assist the governor in the coordination of regional councils of governments, in order to promote maximum benefits from the expenditure of federal, state, and local funds;

(3) to promote increased private investment in such cultural basins;

(4) to prepare legislative and other recommendations with respect to both short-range and long-range programs and projects;

(5) to develop, on a continuing basis, comprehensive and coordinated plans and programs and establish priorities thereunder, giving due consideration to other federal, state, regional, and local planning in the cultural basin;

(6) to conduct and sponsor investigations, research, and studies including an inventory and analysis of the resources of the cultural basin, and in cooperation with federal, state, regional, and local agencies, sponsor demonstration projects designed to foster cultural basin productivity and growth;

(7) to review and study, in cooperation with the agency involved, federal, state, regional, and local public and private programs and, where appropriate, recommend modifications or additions which will increase their effectiveness in the cultural basin;

(8) to formulate and recommend interstate compacts and other forms of interstate cooperation;

(9) to formulate and recommend international agreements between the United States and Mexico where such agreements have significant impact on the economy or delivery of services to the people of Texas;

(10) to provide a forum for consideration of problems of the cultural basins and proposed solutions and establish and utilize, as appropriate, citizens and special advisory councils and public conferences.

(b) The governor as the commission's chairman shall present such plans and proposals of the commission for review by state agencies primarily interested in such plans and proposals and then, together with the recommendations of such agencies, make selected recommendations to the legislature for such actions as he may deem desirable.

(c) The governor as the commission's chairman shall provide effective and continuing li-

aison between the federal government, state agencies, and all cultural basin commissions.

(d) Each state agency shall, consonant with law and within the limits of available funds, cooperate with such commissions as may be established in order to assist them in carrying out their functions under this section.

(e) Each commission may, from time to time, make additional recommendations to the legislature and to appropriate local officials, with respect to:

(1) the expenditure of funds by federal, state, and local departments and agencies in its cultural basin in the fields of natural resources, agriculture, education, training, health and welfare, transportation, recreation, public works, and other fields related to the purposes of this Act; and

(2) such additional state legislation or administrative actions as the commission deems necessary to further the purpose of this Act.

(f) Nothing in this Act shall be construed to give any cultural basin the power of approval or disapproval of funding to any county, city or regional council of government organization.

## Functions of Commission Members

Sec. 8. (a) In addition to the functions of the commission as stated in Section 7 of this Act, the commission members shall perform the following duties:

(1) Local officials and citizens are charged with the responsibility of establishing local goals and priorities, basin-wide goals and priorities, and making management and policy decisions.

(2) Regional councils of government chairmen and presidents shall coordinate the efforts, programs, goals, and projects of regional councils of governments with those of the cultural basin commission and make management and policy decisions.

(3) State and federal agency representatives are charged with the responsibility of designing programs and allocating funds necessary to implement the goals set by the cultural basin commission. State and federal agencies shall coordinate existing programs and design new state and federal programs through direct contact and communications between local, regional, state, and federal agency representatives on cultural basin commissions.

(b) Whenever possible, existing groups, such as those proposed by The Texas Industrial Commission-Texas Office of Economic Opportunity Selective Economic Development Plan or the local human resources councils shall be used in local goal-setting. Information, studies, and proposed solutions to problems from citizen commissions, such as the Rural Development Commission, shall be utilized.

## Technical and Planning Assistance

Sec. 9. The governor is instructed to provide to the several commissions technical as-

sistance and staff support to aid the commissions in carrying out their functions under this Act and to develop recommendations and programs. Such assistance shall include studies and plans evaluating the needs of, and developing potentialities for, economic growth of such cultural basins, and research on improving the conservation and utilization of the human and natural resources of the cultural basins. Such assistance may be provided by the governor through members of his staff, through the payment of funds authorized for this section to other departments or agencies of state government, through the employment of private individuals, partnerships, firms, corporations, or suitable institutions and contracts entered into for such purposes, or through grants to the commission.

#### Administrative Allocation

Sec. 10. (a) For budgetary purposes, cultural basin commissions shall be attached to and considered part of the governor's office, with necessary expenses of operations to be financed by line-item appropriations made by the legislature to the governor's office for that purpose.

(b) The members of the commission are entitled to receive their actual travel and other necessary expenses in the performance of their duties when not reimbursed from other sources.

(c) The commission may accept gifts and grants of money from any individual, group, association, corporation, or the federal government. Such funds received shall be deposited in the state treasury to be released as appropriated by the legislature in accordance with the specific purpose for which given and under conditions that may be imposed by the donor and in accordance with the annual report or other recommendations of cultural basin commissions.

#### Development Grant

Sec. 11. (a) The legislature shall appropriate a development grant fund. Upon receipt of the cultural basin commission's report as stated in Subsection (b) of Section 7, the legislature may release appropriate development grant funds in block grant form to be used by the particular cultural basin commission in accordance with its annual report, containing recommendations to the legislature for the development of projects, programs, and studies.

(b) In developing recommendations for programs and projects for cultural basins, and in establishing within those recommendations funding and other appropriate actions and a priority ranking for such programs and projects, the governor shall encourage each commission and reviewing state agency to follow procedures that will insure consideration of the following factors:

(1) the relationship of the project or projects to overall cultural basin development including its location in an area de-

termined to have a significant potential for growth;

(2) the population and area to be served by the project or projects including the relative per capita income and the unemployment rates in the area;

(3) the relative financial resources available to the state or political subdivision or instrumentalities thereof which seek to undertake the project;

(4) the importance of the project or projects in relation to other projects or classes of projects which may be in competition for the same funds;

(5) the prospects that the project, on a continuing rather than a temporary basis, will improve the opportunities for employment, the average level of income, or the economic and social development of the area served by the project; and

(6) possible environmental impact.

#### A Pilot Project

Sec. 12. The Greater South Texas Cultural Basin shall be designated by the governor as the first cultural basin. The experience of the Greater South Texas Cultural Basin Commission shall aid in the formulation and development of additional cultural basin commissions statewide.

#### Annual Report

Sec. 13. On or before December 1 of each year, each cultural basin commission shall make in writing a complete and detailed report of its activities and recommendations, consistent with Subsection (b) of Section 7 and Subsections (a) and (b) of Section 11, to the governor and to the presiding officer of each house of the legislature.

#### Severability Clause

Sec. 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 1580, ch. 571, eff. Aug. 27, 1973.]

### CHAPTER EIGHT. PUBLICATIONS OF EXECUTIVE DEPARTMENTS AND STATE AGENCIES

#### Art. 4413(33). Charge for Sale of Publications of Executive Departments and State Agencies

Sec. 1. Any department or agency in the executive branch of the state government may, unless otherwise specifically directed by statute, set and collect a sales charge for publications and other printed matter when such charges are deemed to be in the public interest.

Sec. 2. In any instances where the amounts of such sales charges are not specifically set by statute, the charge authorized by this Act shall not be greater than an amount deemed sufficient by the publishing department or agency in the executive branch, to reasonably reimburse the state for the actual expense of printing such publications or printed matter.

Sec. 3. Money collected from the charges authorized by this Act shall be deposited in the fund from which the costs of printing the respective publications or materials were originally paid, and such moneys shall be subject to appropriation by the Legislature.

Sec. 4. Nothing in this Act shall be construed as amending or repealing existing laws respecting what publications or materials may be printed by the respective departments or agencies in the executive branch of the government of this state; or as altering the amounts of charges to be made for publications or printed materials specifically set forth in other statutes.

Sec. 5. Pursuant to the principle set forth in Article 16, Section 21, of the Constitution of Texas, no official or employee of the state government may, directly or indirectly, profit by or have any pecuniary interest in the preparation, printing or duplication, or sale, of publications and other printed matter issued by the respective departments or agencies in the executive branch of the government. Any official or employee who violates the provisions of this section shall be dismissed from state employment.

[Acts 1957, 55th Leg., p. 531, ch. 248.]

**CHAPTER NINE. COMMISSIONS AND AGENCIES**

**Article**

- 4413(34). Mass Transportation Commission.
- 4413(35). Commission on Fire Protection Personnel Standards and Education.
- 4413(36). Motor Vehicle Commission Code.
- 4413(37). Repealed.
- 4413(38). Coastal and Marine Council.
- 4413(39). Building Materials and Systems Testing Laboratory.
- 4413(40). Civil Air Patrol Commission.
- 4413(41). Amusement Machine Commission.
- 4413(42). Commission for the Deaf.
- 4413(43). Commission on Services to Children and Youth.
- 4413(44). Governor's Commission on Physical Fitness.
- 4413(45). Film Commission.
- 4413(46). Governor's Division of Planning Coordination.

**Art. 4413(34). Mass Transportation Commission**

**Short Title**

Sec. 1. This Act may be cited as the Texas Mass Transportation Commission Act.

**Creation and Membership of Commission**

Sec. 2. There is created a Texas Mass Transportation Commission to consist of six members. Its principal office is located in the City of Austin.

**Appointment and Terms of Office**

Sec. 3. (a) The governor, with the advice and consent of the Senate, shall appoint the six commission members for staggered terms of six years.

(b) Vacancies on the commission are filled in the same manner as original appointments, but only for the unexpired portion of the term.

**Qualifications of Commission Members**

Sec. 4. (a) The governor shall appoint as a member of the commission one person who resides in the Gulf Coast area of the state; one who resides in the Trans-Pecos area; one who resides in the Central Texas area; one who resides in the Northeast area; one who resides in the Panhandle-South Plains area; and one from the state at large.

(b) To be qualified for appointment, a person must be

- (1) a citizen of the state;
- (2) of voting age;

(3) engaged in or have an interest in public mass transportation, but shall not be an official or employee of any local government, state or federal department or agency.

(c) No more than two members of the commission may be employed by, or own an interest in, a public mass transportation system or a business manufacturing public mass transportation media, or their components.

**Board Meetings and Officers**

Sec. 5. (a) The commission shall hold a regular annual meeting. It shall hold a special meeting at the call of the chairman or at the request of four commission members.

(b) A majority of the commission is a quorum for conducting business and may act for the commission.

(c) The commission shall elect its officers, who shall serve for terms of two years.

**Assistants**

Sec. 6. The commission may employ as many assistants as it considers necessary to carry out the provisions of this Act.

**Compensation**

Sec. 7. (a) Members of the commission are entitled to compensation of \$25 a day for each day spent in attending the business of the commission and for going to and returning from attending to that business. They are also entitled to reimbursement for their actual expenses incurred in attending to the business of the commission.

(b) The commission shall fix the amount of compensation and expense reimbursement for its assistants.

**Duties of Commission**

Sec. 8. (a) The commission shall

- (1) encourage, foster, and assist in the development of public mass transportation,

both intracity and intercity, in this state; and

(2) encourage the establishment of rapid transit and other transportation media.

(b) The commission may not promulgate rules or regulations which impose a greater restriction upon public mass transportation than now exists, or which impose economic controls.

(c) The commission may recommend necessary legislation to advance the interests of the state in public mass transportation and may represent the state in mass transportation matters before federal and state agencies.

(d) The commission may render financial assistance in the planning of public mass transportation systems out of appropriations made by the Legislature for that purpose.

(e) The commission may enter into any contracts necessary to exercise the powers granted by this Act, but may not enter into any contract

(1) obligating the state to pay money which has not been appropriated to the commission; or

(2) binding the state in a manner not authorized by this Act.

(f) The commission may not issue certificates of convenience and necessity.

(g) The commission shall conduct hearings and make investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or part by the state. It shall also assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing and maintaining public mass transportation systems.

(h) The commission may accept and receipt for federal and other grants either public or private, for the state or any political subdivision thereof, when authorized by the state or subdivision, for the acquisition, construction, improvement, maintenance, or operation of public mass transportation facilities. Grants may be accepted under this subsection whether the work is to be done by the state, a municipality, or any other political subdivision of the state aided by grants from the United States upon terms and conditions now or later prescribed by the laws of the United States. The state or the governing body of a municipality or other political subdivision may designate the commission as its agent to receive money under this section and the commission acting as agent may contract with the federal government for the acquisition, construction, improvement, maintenance, or operation of public mass transportation facilities.

(i) All contracts for the acquisition, construction, improvement, maintenance, or operation of public mass transportation facilities made by the commission acting as agent under

Subsection (h) of this section must conform to state law.

#### Director of Mass Transportation

Sec. 9. (a) The commission shall appoint a director of mass transportation, who serves at the pleasure of the commission.

(b) The director is entitled to receive the salary provided in the General Appropriations Act.

#### Duties and Powers of Director

Sec. 10. (a) The director shall develop and maintain a comprehensive master plan for public mass transportation development in the state and shall correlate the master plan with plans of the Texas Railroad Commission and other agencies or departments concerned with public transportation.

(b) He shall serve as the commission's executive officer and under its supervision shall administer the provisions of this Act. He shall attend all meetings of the commission, but may not vote. He shall, subject to the approval of the commission, hire as many experts, field and office assistants, clerks, and other employees as may be required for the proper discharge of the commission's duties. The director is responsible to the commission for the preparation of reports and the collection and dissemination of data relating to public mass transportation. At the direction of the commission, he shall, together with the chairman of the commission, execute all contracts for the commission which are authorized by this Act.

(c) The commission may, by written order filed in its office, delegate to the director any of its powers or duties and the director shall then exercise the powers and perform the duties in the commission's name.

[Acts 1969, 61st Leg., p. 1825, ch. 615, eff. Sept. 1, 1969.]

#### Art. 4413(35). Commission on Fire Protection Personnel Standards and Education

##### Creation

Sec. 1. There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission."

##### Powers

Sec. 2. The commission shall have the authority and power to:

(1) promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this State which employs fire protection personnel;

(2) establish minimum educational, training, physical, mental, and moral standards for admission to employment as fire protection personnel in permanent positions or in temporary or probationary status;



(3) certify persons as being qualified under the provisions of this Act to be fire protection personnel;

(4) certify persons as having qualified as fire protection instructors under such conditions as the commission may prescribe;

(5) establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the State or any political subdivisions thereof for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel;

(6) consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of fire protection personnel training schools and programs of courses of instruction;

(7) approve, or revoke the approval of, institutions and facilities for schools operated by or for the State or any political subdivision thereof for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel, and issue certificates of approval to such institutions and revoke such certificates of approval;

(8) operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic, and advanced courses, for fire protection personnel and recruits for the position of fire protection personnel as the commission may determine;

(9) contract with other agencies, public or private, or persons, as the commission deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with municipal, county, state, and federal agencies in training programs, and to otherwise perform its functions;

(10) make or encourage studies of any aspect of fire protection, including fire administration;

(11) conduct and stimulate research by public and private agencies which shall be designed to improve fire protection and fire administration;

(12) employ an executive director and such other personnel as may be necessary in the performance of its functions;

(13) visit and inspect all institutions and facilities conducting courses for the training of fire protection personnel and recruits for the position of fire protection personnel and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the commission's rules and regulations;

(14) adopt and amend rules and regulations, consistent with state law, for its internal management and control;

(15) accept any donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(16) report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable; and

(17) meet at such times and places in the State of Texas as it deems proper, meetings to be called by the chairman upon his own motion, or upon the written request of five members.

Members; Appointment; Qualifications;  
Terms; Vacancies

Sec. 3. The commission shall be composed of nine members, residents of the State of Texas, and appointed by the Governor with the advice and consent of the Senate. Such members shall be persons well qualified by experience or education in the field of fire protection. The Commissioner of Higher Education of the Coordinating Board, Texas College and University System, and the Commissioner of the Texas Education Agency shall serve as ex officio members of the commission. In the event a public officer shall be appointed, service by such officer or officers shall be an additional duty of the office. Such appointive members shall be appointed for a term of six years, provided, however, that of the members first appointed, three shall be appointed for a term of two years, three for a term of four years, and three for a term of six years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of a term shall be appointed for the unexpired term of the member he is chosen to succeed. Such appointment for unexpired term shall be with the advice and consent of the Senate.

Officers; Quorum; Meetings

Sec. 4. The commission shall elect a chairman, vice-chairman, and secretary from among the appointed members at its first meeting, and thereafter at its first meeting succeeding new appointments to fill regular terms. Five members shall constitute a quorum. The Governor shall summon the commission to its first meeting.

Compensation; Expenses

Sec. 5. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

Personnel Qualifications and Standards; Rules and Regulations; Certificate; Penalty

Sec. 6. (a) Fire protection personnel already serving under permanent appointment

prior to September 1, 1972, shall not be required to meet any requirement of Subsections (b) and (c) of this section as a condition of tenure or continued employment, nor shall failure of fire protection personnel to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible. The Legislature finds, and it is hereby declared to be the policy of this Act, that such fire protection personnel have satisfied such requirements by their experience.

(b) No person after September 1, 1972, shall be appointed to a municipal fire department, except on a temporary or probationary basis, unless such person has satisfactorily completed a preparatory program of training in fire protection at a school approved or operated by the commission. Fire protection personnel who have received a temporary or probationary appointment as such on September 1, 1972, or thereafter, and who fail to satisfactorily complete a basic course in fire protection as prescribed by the commission, within a one-year period from the date of his original appointment, shall forfeit his position and shall be removed therefrom; and may not have his temporary or probationary employment extended beyond one year by renewal of appointment or otherwise; except that after the lapse of one year from the date of his forfeiture and removal, a municipal fire department agency may petition the commission for reinstatement of temporary or probationary employment of such individual, such reinstatement resting within the sole discretion of the commission.

(c) In addition to the requirements of Subsection (b) of this section, the commission, by rules and regulations, may establish other qualifications for the employment of fire protection personnel, including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and the commission shall prescribe the means of presenting evidence of fulfillment of these requirements. No person shall be appointed unless he fulfills such requirements.

(d) The commission shall issue a certificate evidencing satisfaction of the requirements of Subsections (b) and (c) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this State.

(e) Any person who accepts appointment to a municipal fire department, or any person who appoints or retains such individual, in violation of Subsections (b) or (c) of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$1,000.

(f) Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel which exceed the minimum standards set by the commission.

(g) Fire protection personnel already serving under permanent appointment prior to September 1, 1972, shall be eligible to attend training courses subject to the rules and regulations established by the commission.

#### Training Programs; Reimbursement for Expenses

Sec. 7. (a) The commission shall establish and maintain fire protection training programs to be conducted by its own staff or through such agencies and institutions as the commission may deem appropriate.

(b) The commission may authorize reimbursement for each political subdivision and each state agency for expenses in attending such training programs as authorized by the Legislature.

#### Powers and Duties of Municipal or County Governments

Sec. 8. Except as expressly provided in this Act, nothing herein contained shall be deemed to limit the powers, rights, duties, and responsibilities of municipal or county governments, nor to affect provisions of Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes), Firemen's and Policemen's Civil Service Act.

#### Funds

Sec. 9. The Legislature of the State of Texas shall appropriate the necessary funds for the purpose of carrying out the provisions of this Act.

#### Appeal from Action of Commission; Procedure

Sec. 9A. Any person dissatisfied with the action of the commission may appeal the action of the commission by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court, to set the matter for hearing upon 10 days' written notice to the commission and the attorney representing the commission. The court in which the petition of appeal is filed shall determine whether any action of the commission shall be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the commission, and the commission shall provide the attorney representing the commission with a copy of the petition and order. The commission shall be represented in such appeals by the district or county attorney of the county, or the attorney general, or any of their assistants.

#### Application of Act

Sec. 10. This Act shall apply only to fully paid firemen.

[Acts 1969, 1st Leg., p. 1972, ch. 668, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 1158, ch. 263, §§ 1 to 6, eff. Aug. 30, 1971.]

Art. 4413(36). Motor Vehicle Commission Code

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Texas Motor Vehicle Commission Code.

Policy and Purpose

Sec. 1.02. The distribution and sale of new motor vehicles in this State vitally affects the general economy of the State and the public interest and welfare of its citizens. It is the policy of this State and the purpose of this Act to exercise the State's police power to insure a sound system of distributing and selling new motor vehicles through licensing and regulating the manufacturers, distributors, and franchised dealers of those vehicles to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, discriminations, impositions, and other abuses of our citizens.

Definitions

Sec. 1.03. In this Act, unless the context requires a different definition:

(1) "Motor vehicle" means every self-propelled vehicle by which a person or property may be transported on a public highway and having four or more wheels.

(2) "New motor vehicle" means a motor vehicle which has not been the subject of a "retail sale" as defined in Article 6.03(B), Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended.

(3) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(4) "Dealer" means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.

(5) "Manufacturer" means any person who manufactures or assembles new motor vehicles either within or without this State.

(6) "Distributor" means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.

(7) "Representative" means any person who is or acts as an agent, employee or representative of a manufacturer or distributor who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer or distributor.

(8) "Franchise" means a contract under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent busi-

ness is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; and (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business.

(9) "Commission" means the Texas Motor Vehicle Commission created by this Act.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Texas Motor Vehicle Commission

Sec. 2.01. The Texas Motor Vehicle Commission is hereby created as an agency of the State to carry out the functions and duties conferred upon it by this Act.

Members of Commission

Sec. 2.02. The Commission shall consist of six persons appointed by the Governor with the advice and consent of the Senate.

Qualifications of Members

Sec. 2.03. Each member of the Commission shall be a citizen of the United States and a resident of this State. Four members shall be dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Two members shall be persons not required to be licensed hereunder from the public at large. The persons initially appointed to the Commission as dealer-members shall be persons whose principal occupation has been as franchised new motor vehicle dealers in this State for at least ten years. The dealer-members appointed to the Commission after the initial appointments are made shall be licensed dealers under this Act. If any dealer-member of the Commission ceases to be a licensed dealer under this Act, the office of such member is automatically vacated, which shall be filled as any other vacancy.

Terms of Members

Sec. 2.04. The members of the Commission shall hold office for terms of six years, except the initial members, with the terms of two members expiring on September 1 of each odd-numbered year. The members of the first Commission shall be appointed within ninety days after this Act becomes effective, with the Governor designating two to serve for terms expiring September 1, 1973, two for terms expiring September 1, 1975, and two for terms expiring September 1, 1977. The Governor shall make the appointments in such a way that there are always two members on the Commission from the public at large. No person shall serve two consecutive full six-year terms as a member of the Commission.

Vacancies

Sec. 2.05. The Governor, with the advice and consent of the Senate, shall fill vacancies

on the Commission for the duration of the unexpired term.

#### Oath

Sec. 2.06. Members of the Commission qualify by taking the constitutional oath of office which shall, with the certificate of appointment, be filed with the Secretary of State who shall issue a commission as evidence of the authority of the members to act.

#### Per Diem; Expenses

Sec. 2.07. Each member of the Commission shall be entitled to \$25.00 per day for each day actually engaged in the duties of the office, including time spent in necessary travel to and from meetings and otherwise, together with all travel and other necessary expenses incurred while performing official duties.

#### Commission Meetings

Sec. 2.08. The Commission shall hold a regular annual meeting in September of each year and elect a chairman and vice-chairman to serve for the ensuing year. The Commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any two members. Reasonable notice of all meetings shall be given as Commission rules prescribe. A majority of the Commission, including at least one of the public members, shall constitute a quorum to transact business.

#### Executive Director; Staff

Sec. 2.09. The Commission shall employ an executive director who shall be the chief administrative officer of the Commission who shall maintain all minutes of Commission proceedings and who shall be custodian of the files and records of the Commission. The executive director shall employ the staff authorized by the Commission. The Commission may by interagency contract utilize assistance of any State agency.

#### Special Fund

Sec. 2.10. The Commission shall deposit all moneys received by it from license fees paid under this Act with the State Treasurer, who shall keep them in a separate fund to be known as the "Motor Vehicle Commission Fund." The Commission may use this fund for salaries, wages, per diem, professional and consulting fees, grants, loans, contracts, travel expenses, equipment, office rent and expense and other necessary expense incurred in carrying out its duties under the Act as provided by legislative appropriation. At the close of each biennium the unexpended balance remaining in the Motor Vehicle Commission Fund shall be transferred to the general revenue fund.

#### Seal

Sec. 2.11. The Commission shall adopt a seal for the authentication of its records and orders.

## SUBCHAPTER C. POWERS AND DUTIES

### In General

Sec. 3.01. The Commission shall administer the provisions of this Act, establish the qualifications of manufacturers and dealers, and insure that the distribution and sale of motor vehicles is conducted as provided herein and under the Commission's rules. The Commission has the powers and duties specifically prescribed by this Act and all other powers necessary and convenient to carry out its responsibilities.

### Rules

Sec. 3.02. The Commission, after hearing, shall make, amend, and enforce rules reasonably required to effectuate the provisions of this Act and govern procedure and practice before the Commission. The Commission shall comply with Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

### Orders

Sec. 3.03. The Commission is authorized to issue orders and make determinations as may be necessary to carry out this Act. The orders shall set forth the findings on which the order is based and the reason for the particular action taken. All orders shall be signed by the chairman or vice-chairman and attested by the executive director and have the seal affixed.

### Hearings

Sec. 3.04. (a) The Commission may hold hearings, administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering the Act and the rules, orders, and other actions of the Commission.

(b) Notice of a hearing shall describe in summary form the purposes of the hearing and its date, time, and place.

(c) Notice of a hearing on Commission rules and other matters having general application shall be mailed to all licensees not less than twenty days before the hearing date and may be given to such other persons as the Commission deems appropriate. Notice of a hearing concerning a specific geographic area and not having general application shall be sent to the licensees in that area as defined by the Commission.

(d) Notice of a hearing concerning individual persons shall be given by certified mail return receipt requested to the persons involved at their last known address not less than twenty days before the hearing date. Notice may be given to any officer, agent, employee, legal representative or attorney of the person. Notice may be waived by interested persons.

(e) A hearing shall be conducted at the time and place stated in the notice or an amended

notice shall be sent. A hearing may be continued from time to time and place to place as announced openly before the hearing is recessed without further notice or otherwise by giving reasonable notice less than twenty days before.

(f) The Commission may delegate the authority to call and hold hearings to one or more of its members, the executive director, one or more employees of the Commission or to persons under contract to the Commission. The person holding the hearing shall have all the powers of the Commission in connection with the hearing.

(g) All persons whose rights may be affected at any hearing shall have the right to appear personally and by counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in their own behalf. If a hearing is not held before the whole Commission, such person shall have the right to appear before the Commission and present evidence when the matter comes before them for decision.

(h) A retail buyer of a new motor vehicle may make a complaint concerning defects in a new motor vehicle which are covered by the warranty agreement applicable to the vehicle. Such complaint must be made by certified letter to the dealer and must specify the defects in the vehicle which are covered by the warranty. After the dealer has had thirty days in which to correct defects covered by the warranty, the owner may make further complaint by an additional certified letter to the dealer with copies to the applicable manufacturer or distributor and the Commission. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

#### Enforcement; Contracts; Instruments

Sec. 3.05. The Commission may cause legal proceedings to be instituted to enforce this Act and its rules, orders and decisions. Should it appear from any investigation of a possible violation of any other law or regulation that a violation of this Act may have occurred, the matter shall be referred to the Commission to determine whether proceedings under this Act are also appropriate. The Commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.

### SUBCHAPTER D. LICENSES

#### License Required

Sec. 4.01. No person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor or representative in this State without obtaining a license therefor as provided in this Act on or after December 1, 1971. All licenses shall be issued between August 31 and December 1 of each year as prescribed by the Commission and shall expire one year from date of issue.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 4.01A. The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

#### Dealer Application

Sec. 4.02. (a) The application for a dealer license shall be on a form prescribed by the Commission which shall include information on the applicant's financial resources, business integrity, business ability and experience, franchise agreement, physical facilities for sales and service, parts and accessories, inventory, new vehicle inventory and other factors the Commission considers necessary to determine applicant's qualifications to adequately serve the motoring public.

(b) A license may be renewed annually by filing an application on the forms prescribed which shall keep current the information supplied in the original application and by paying the fees.

(c) A dealer may carry on the business of his dealership at more than one location; however, a separate license shall be required for each separate and distinct dealership as determined by the Commission.

(d) A dealer licensed hereunder shall promptly notify the Commission of a change in ownership, location or franchise of a dealer, or any other matters the Commission may require by rule. If a dealer changes location of all or any part of his dealership to another municipality, a new license must be applied for as in any original application.

#### Manufacturer, Distributor and Representative Application

Sec. 4.03. (a) The application for a manufacturer's, distributor's, or representative's license shall be on a form prescribed by the Commission which form shall contain such information as the Commission deems necessary to fully determine the qualifications of the applicant for a license, including financial resources, business integrity and experience, facilities and personnel for serving dealers and such other information as the Commission considers to be pertinent to safeguard the public interest and welfare.

(b) The applicant for a manufacturer's license shall furnish a list of all distributors, representatives acting for applicant, and all dealers franchised to sell applicant's products in this State and their location and contract term. Thereafter all manufacturers shall advise the Commission within fifteen days of any change in the list of distributors, representatives, and dealers, and this information shall become part of the licensee's application.

(c) Each application for a manufacturer's license shall include an instrument setting forth the terms and conditions of all warranty agreements in force and effect on the products it sells in this State to ascertain the degree of protection afforded the retail purchasers of those products and the obligations of dealers in connection therewith as well as the basis for compensating dealers for labor, parts and other expenses incurred in connection with such manufacturer's warranty agreements. In addition, all manufacturers shall specify on or with the application the delivery and preparation obligations of their dealers prior to delivery of a new motor vehicle to a retail purchaser and the schedule of compensation to be paid to dealers for the work and service performed by them in connection with such delivery.

(d) The application for a distributor license shall disclose the manufacturer for whom the distributor will act, whether the manufacturer is licensed in this State, the warranty covering the vehicles to be sold, the persons in this State who will be responsible for compliance with that warranty, and the nature and terms of the contract under which the distributor will act for a manufacturer. Also, the application must disclose the dealers with whom the distributor will do business. If the distributor is to have any responsibility for warranties, the distributor shall furnish the same information pertaining thereto as is required of a manufacturer. The Commission shall be advised of any change in this information within fifteen days from the date thereof and such new information shall become part of the licensee's application.

(e) A license may be renewed annually by filing an application on the forms prescribed which shall keep current the information supplied in the original application and by paying the fees.

#### Doing Business

Sec. 4.04. The obtaining of a license hereunder shall constitute the doing of business in this State, and if no agent for service of process has been designated by a licensee, the licensee will be deemed to have designated the Secretary of State of Texas as his or its agent for receipt of service of process.

#### Fees

Sec. 4.05. (a) The annual license fees for licenses issued hereunder shall be as follows:

- (1) For each manufacturer and distributor, \$200.00.
- (2) For each dealer who sold more than 200 new motor vehicles during the preceding calendar year, \$50.00.
- (3) For each dealer who sold 200 or less new motor vehicles during the preceding calendar year, \$25.00.
- (4) For each representative, \$25.00.

(b) If any person fails to apply for a license required hereunder or fails to pay a fee within the time specified, such person shall pay as a penalty 50% of the amount of the fee for each thirty days of default.

#### Denial, Revocation or Suspension of License

Sec. 4.06. (a) The Commission may deny an application for a license or revoke or suspend an outstanding license, for any of the following reasons:

- (1) Proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules.
- (2) Material misrepresentation in any application or other information filed under this Act or Commission rules.
- (3) Willful failure to comply with this Act or any rule promulgated by the Commission hereunder.
- (4) Failure to maintain the qualifications for a license.
- (5) Willfully defrauding any retail buyer to the buyer's damage.
- (6) Willful violation of any law relating to the sale, distribution, financing or insuring of new motor vehicles.
- (7) Any act or omission by an officer, director, partner, trustee or other person acting in a representative capacity for a licensee which act or omission would be cause for denying, revoking or suspending a license to an individual licensee.

(b) The revocation of a license previously held under this Act may be grounds for denying a subsequent application for a license.

(c) The Commission may deny a dealer application to establish a new dealership in a community or metropolitan area where the same line-make of new motor vehicle is then represented by a dealer who is in compliance with his franchise agreement with the manufacturer or distributor, is adequately representing the manufacturer or distributor in that community or metropolitan area in the sale and service of its new motor vehicles, and no good cause is shown for an additional dealer license in the public interest.

(d) The revocation or suspension of a manufacturer or distributor license may be limited to one or more municipalities or counties or any other defined area, or may be revoked or suspended in a defined area only as to certain aspects of its business, or as to a specified dealer or dealers.

(e) No license shall be denied, revoked, or suspended except on order of the Commission after a hearing and the evidence adduced is considered by the Commission at the hearing or by a hearing report. The Commission may inspect the books and records of a licensee in connection with a hearing called or proposed.

## SUBCHAPTER E. PROHIBITIONS

## Dealers

Sec. 5.01. It shall be unlawful for any dealer to:

(1) Require a retail purchaser of a new motor vehicle as a condition of sale and delivery thereof to purchase special features, equipment, parts or accessories not ordered or desired by the purchaser, provided such features, equipment, parts or accessories are not already installed on the new motor vehicle when received by the dealer.

(2) Use false, deceptive or misleading advertising, in connection with any of the business of a dealer, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(3) Fail to perform after complaint and hearing the obligations placed on the selling dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements on file with the Commission and applicable to such vehicle.

(4) Fail after complaint and hearing to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements on file with the Commission.

(5) Operate as a dealer without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

## Manufacturers; Distributors; Representatives

Sec. 5.02. It shall be unlawful for any manufacturer, distributor or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall such labor rate be more than the retail rate. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. The dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer.

(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

#### SUBCHAPTER F. ENFORCEMENT

##### Penalty

Sec. 6.01. Any person who violates any provision of this Act or any rule, regulation, or order of the Commission issued pursuant to this Act is subject to a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each day of violation and for each act of violation, as the court may deem proper. All civil penalties recovered under this Act shall be paid to the General Revenue Fund of the State of Texas.

##### Injunction

Sec. 6.02. Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this Act or of any rule, regulation, or order of the Commission issued pursuant to this Act then the Commission, or the executive director when authorized by the Commission, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for

the assessment and recovery of the civil penalty provided in Section 6.01 above or for both injunctive relief and civil penalty.

##### Suit

Sec. 6.03. At the request of the Commission, or the executive director when authorized by the Commission, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty.

##### Venue

Sec. 6.04. A suit for injunctive relief or for recovery of a civil penalty or for both may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

##### Bond

Sec. 6.05. In any suit to enjoin a violation or threat of violation of this Act or of any rule, regulation, license or order of the Commission, the court may grant the Commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions and permanent injunctions.

#### SUBCHAPTER G. JUDICIAL REVIEW

##### Appeal

Sec. 7.01. (a) A person affected by any ruling, order, decision or other act of the Commission may appeal by filing a petition in a district court of Travis County, Texas.

(b) The petition must be filed within thirty days after the effective date of the Commission's action.

(c) Service of citation on the Commission must be accomplished within thirty days after the date the petition is filed. Citation may be served on the executive director.

(d) In an appeal of a Commission action, the issue is whether the action is invalid, arbitrary, or unreasonable.

[Acts 1971, 62nd Leg., p. 89, ch. 51, § 1, eff. April 7, 1971; Acts 1973, 63rd Leg., p. 627, ch. 266, § 18, eff. June 11, 1973.]

Sections 2 and 3 of the act of 1971 provided:  
"Sec. 2. Nothing herein shall be construed to repeal or amend any provisions of Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

"Sec. 3. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

Art. 4413(37). Repealed by Acts 1973, 63rd Leg., p. 1165, ch. 429, § 6.02, eff. Aug. 27, 1973

The repealed article, establishing a research advisory panel on narcotics and dangerous drugs, was derived from Acts 1971, 62nd Leg., p. 316, ch. 87.

See, now, the Controlled Substances Act, classified as article 4476-15.



**Art. 4413(38). Coastal and Marine Council****Purpose**

Sec. 1. There is hereby created the Texas Coastal and Marine Council, the purpose of which shall be to cooperate and assist in the comprehensive assessment and planning for coastal resources management and other marine-related affairs affecting this state.

**Membership**

Sec. 2. (a) The council is composed of 16 members, each of whom must be a Texas resident.

(b) The governor, lieutenant governor, and speaker of the House of Representatives shall each appoint members to the council. The governor shall appoint four members to include one person each to represent government, the educational profession, commerce and industry, and the general public. The lieutenant governor and speaker shall each appoint six members, to include three government members and one each from the educational profession, commerce and industry, and the general public. The representatives of government shall be a personal representative appointed by the governor, three state senators appointed by the lieutenant governor, and three representatives appointed by the speaker.

(c) All members of the council must be persons who are knowledgeable of, and interested in, marine-related affairs.

(d) All initial appointments to the council by the governor shall be for a term to expire on June 30, 1977. All initial appointments by the lieutenant governor shall be for a term to expire on June 30, 1975. All initial appointments by the speaker shall be for a term to expire June 30, 1973. The successor of each member shall be appointed by the original appointing authority for a term of six years.

(e) If a senator or representative ceases to serve in the house in which he was serving when he was appointed to the council, he ceases to be a member of the council. The person appointed by the governor to represent government ceases to be a member of the council if the governor who appointed him ceases to be governor. If any member of the council fails to attend at least 50 percent of the meetings of the council in any 12-month period or ceases to be a Texas resident, he ceases to be a member of the council.

(f) In the case of a vacancy on the council, the original appointing authority shall appoint a person to fill that vacancy for the unexpired portion of the term. The person appointed to fill the vacant position must meet all qualifications prescribed by this Act for that position.

**Powers and Duties**

Sec. 3. (a) The council shall serve as an advisory body to cooperate with and assist the legislature, state and federal agencies, and political subdivisions, with respect to coastal re-

sources management and other marine-related affairs.

(b) The council may hold public hearings relevant to its purpose. The council may participate in hearings of other public meetings, and may appear before federal agencies, commissions, and boards, congressional committees, legislative committees, state agencies, boards, and commissions, and to provide evidence and testimony with regard to matters and activities affecting coastal resources and marine affairs.

(c) In order to aid the state in making use of federal funds, facilities, and programs relating to marine affairs, the council shall establish a liaison relationship with all appropriate branches and agencies of the federal government.

(d) The council may accept gifts or grants from any source to be used in connection with any of its lawful purposes.

(e) The council may appoint a director to serve at the will of the council. The director is the chief executive officer of the council and subject to the policy direction of the council. He may appoint employees to serve at his will. The council shall determine the compensation of the director and all other employees.

(f) The council shall meet at least once every calendar quarter, and at other times on the call of the chairman or by the written call of two-thirds of the members of the council.

(g) The council shall elect a chairman and may elect other officers.

(h) The council is authorized to carry out such activities as may be deemed necessary or desirable in furtherance of the purposes of this Act.

**Per Diem; Expenses**

Sec. 4. Except for members of the Legislature, members of the council are entitled to compensation of \$50 for each day spent on the official business of the council. All members of the council are entitled to reimbursement for actual and necessary expenses incurred in carrying out council business. Service on the board by a member of the Legislature is a part of his duties as a member of the Legislature and does not constitute a separate office.

**Funding**

Sec. 5. Until the Legislature provides an appropriation for the operation of the council, the contingent expense funds of the House of Representatives and of the Senate may be expended for such purposes authorized herein. Prior to any expenditure of funds of the contingent expense committees of either the House or the Senate, a budget for the annual expenses of the committee shall be submitted to such committees and no funds shall be expended from such funds until approved by that committee.

[Acts 1971, 62nd Leg., p. 1176, ch. 279, eff. May 29, 1971; Acts 1973, 63rd Leg., pp. 565, 566, ch. 239, §§ 1 to 4 eff. Aug. 27, 1973.]

### Art. 4413(39). Building Materials and Systems Testing Laboratory

#### Purpose

Sec. 1. The Legislature hereby finds and declares that there is a need for more and better housing in this State and that one of the most detrimental constraints to meeting this need is the difficulty of introducing technological innovation into residential construction.

The Legislature hereby finds and declares further that local governments have been reluctant to permit the use of many innovative methods and materials in housing construction because of the lack of a competent, objective facility for testing and measuring performance ability of such innovations.

The Legislature hereby finds and declares that the State of Texas Building Materials and Systems Testing Laboratory as created herein would greatly assist local governments, the residential construction industry and the consumers of this State by facilitating the use of innovative methods and materials capable of meeting minimum performance criteria for health and safety.

#### Definitions

Sec. 2. The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Laboratory" means the State of Texas Building Materials and Systems Testing Laboratory.

(2) "Council" means the Technical Testing and Evaluation Council.

(3) "Director" means the Director of the Division of State-Local Relations, office of the Governor, or any successor agency to that division.

(4) "Department" means the Division of State-Local Relations, office of the Governor, or any successor agency to that division.

(5) "Schools" means the colleges or universities selected to participate in laboratory testing and evaluation activities.

#### Creation

Sec. 3. There is hereby created the State of Texas Building Materials and Systems Testing Laboratory, including a Technical Testing and Evaluation Council.

#### Schools to Participate in the Laboratory

Sec. 4. Schools with facilities to perform, test, or make evaluations as described in this Act may be invited by the department to participate in laboratory testing and evaluation and to appoint a representative to serve as a member of the council. Public colleges and universities so selected are hereby authorized to participate in the functions of the laboratory.

#### Membership and Duties of the Council

Sec. 5. (a) Members of the council shall be the laboratory operations directors at each of the participating schools.

(b) Members of the council shall receive no compensation for their services on the council but shall be entitled to receive, from funds of the laboratory, for attendance at meetings of the council and for other services for the laboratory, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties.

(c) The council shall be responsible for the conduct of all tests and evaluations provided for in this Act and shall be responsible for the distribution of tests and evaluation responsibilities to member schools according to their respective abilities to perform the activities as required.

(d) The council shall administer, manage and direct the business of the laboratory subject to the policies, controls and direction of the department.

(e) Members of the council shall elect a chairman for a two-year term by a majority vote at a meeting called for the purpose of electing a chairman.

#### Functions of the Laboratory

Sec. 6. (a) The laboratory shall engage in the testing and evaluation of building materials, products and systems in order to establish performance capability based on the established and generally acceptable test standards adopted or promulgated by the council and approved by the department. Upon determination of the performance ability of a material, product or system as the result of laboratory testing, the council will report test results and evaluations to the department which will be responsible for release and publication of testing data and evaluations. Upon receipt of the test or evaluation results from the council, the department shall issue a performance certification statement based on test or evaluation results which shall constitute the official certification statement and shall be made a matter of public record.

(b) The laboratory, through its council, shall be authorized to evaluate tests of building materials, products, and systems conducted by public or private testing institutions accredited or approved by the Department of Housing and Urban Development or the National Bureau of Standards or included upon any list of testing laboratories formulated by the board. Upon completion of such evaluation by the laboratory, and review by the department, the department, based upon evaluation results, shall issue a performance certification statement which shall either approve or disapprove said tests as meeting or failing to meet test standards established by the department and council.

#### Fees

Sec. 7. (a) The department with the advice of the council shall establish a schedule of fees

to pay the costs incurred in the administration and implementation of this Act.

(b) All fees shall be paid to the laboratory and deposited for the use of the laboratory in the administration and enforcement of this Act.

**Severability Clause**

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1648, ch. 463, eff. May 27, 1971.]

**Art. 4413(40). Civil Air Patrol Commission**

**Creation**

Sec. 1. There is hereby created the Commission for the Texas Civil Air Patrol, hereinafter called the "commission."

**Studies, Recommendations and Reports; Purpose**

Sec. 2. The commission shall have authority to make full and complete studies, recommendations, and reports to the Governor and the Legislature for the purpose of:

- (1) improving and promoting the voluntary deployment of the Texas Civil Air Patrol and its resources, manpower, and equipment in search and rescue operations,
- (2) promoting adequate financing for the operations of the Texas Civil Air Patrol,
- (3) working toward improved Civil Defense Disaster capabilities by joint-operating agreements with the Department of Public Safety, and
- (4) promoting and conducting active aerospace education and training programs.

**Members; Appointment; Terms; Vacancies**

Sec. 3. The commission shall be composed of nine members, residents of the State of Texas, and appointed by the Governor with the advice and consent of the Senate. Such members shall be persons well-qualified by experience in aviation. In the event a public official shall be appointed, service by such official or officials shall be an additional duty of office. Such appointive members shall be appointed for a term of six years, provided, however, that of the members first appointed, three shall be appointed for a term of two years, three for a term of four years, and three for a term of six years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed. Such appointment for unexpired term shall be with the advice and consent of the Senate.

**Officers; Quorum; First Meeting**

Sec. 4. The commission shall elect a chairman, vice-chairman, and secretary from among the appointed members at its first meeting, and thereafter at its first meeting succeeding new appointments to fill regular terms. Five members shall constitute a quorum. The Governor shall summon the commission to its first meeting.

**Expenses**

Sec. 5. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

**Duties**

Sec. 6. In carrying out the duties and responsibilities of the commission it shall have the following duties:

- (a) to meet at such times and places in the State of Texas as it deems proper; meeting shall be called by the chairman upon his own motion, or upon the written request of five members;
- (b) to contract with other agencies, public or private, or persons, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with other cooperative agencies.

**Appropriations**

Sec. 7. The Legislature of the State of Texas shall appropriate the necessary funds for the purpose of carrying out the provisions of this Act.

**Severability**

Sec. 8. If any provisions of this Act, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications and to this end the provisions of this Act are declared severable.

[Acts 1971, 62nd Leg., p. 1778, ch. 521, eff. June 1, 1971.]

**Art. 4413(41). Amusement Machine Commission**

**Creation; Members; Appointment; Terms**

Sec. 1. There is hereby created an agency of the State of Texas which shall be designated as the Texas Vending Commission; said Commission shall consist of six (6) members to be appointed by the Governor with the advice and consent of the Senate and three (3) ex officio members, who shall have the right to vote, to be the Director of the Department of Public Safety, or his nominee; the Commissioner of Consumer Credit, or his nominee; and the Attorney General, or his nominee. Of the six appointed members, not more than three (3) shall be or have ever been an "owner" or "operator" of any "coin-operated" machine as those terms

are defined in Chapter 13, Title 122A, Taxation-General, Revised Civil Statutes of Texas, as amended.<sup>1</sup> In making the initial appointments, the Governor shall designate two (2) members for a term expiring January 31, 1973; two (2) members for a term expiring January 31, 1975; and two (2) members for a term expiring January 31, 1977. Thereafter their successors shall serve for six (6) years. Appointees shall hold office until their successors are appointed and qualified.

<sup>1</sup> Taxation-General, Art. 13.01 et seq.

#### Change of Name

Sec. 1A. The name of the Texas Vending Commission is changed to the Texas Amusement Machine Commission.

#### Transfer of Functions from Comptroller; Effective Date

Sec. 2. There are hereby transferred to the Texas Vending Commission all of the duties, powers, functions, responsibilities and authority heretofore exercised by the Comptroller of Public Accounts under Chapter 13, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended so that hereafter the term "Texas Vending Commission" shall be substituted for the phrase "Comptroller of Public Accounts" or the word "Comptroller" in said Chapter 13. This section shall be effective on September 1, 1971.

#### Executive Director; Personnel; Compensation

Sec. 3. The Texas Vending Commission shall be empowered to hire and employ an Executive Director and such other personnel as may be required and necessary to carry out the duties, functions, responsibilities and authority of said Commission including professional consultants. The Executive Director of the Commission and other personnel shall receive such compensation as may be set by the Commission, exclusive of any necessary expenses incurred in the performance of official duties, as shall be appropriated by the Legislature.

#### Compensation of Members

Sec. 4. All members of the Commission shall be compensated for attendance at meetings in an amount of Thirty-five Dollars (\$35.00) per day for each day they are actually engaged in performing their duties; provided, however, they shall not draw compensation for more than sixty (60) days in any one fiscal year. In addition to the per diem provided for herein, members of the Commission shall be reimbursed for their actual and necessary traveling expenses in the performance of their duties.

Sec. 5. [Amends Taxation-General, Art. 13.17, § 16].

Sec. 6. [Amends Taxation-General, Art. 13.17, § 19(4)].

#### Deposit of Funds; Appropriations

Sec. 7. All funds received by the Commission for license fees pursuant to Article 13.17, Title 122A, Taxation-General, Revised Civil

Statutes of Texas, as amended, shall be deposited to the General Revenue Fund of the State Treasury. All money to be expended by the Commission shall be appropriated out of the General Revenue Fund.

[Acts 1971, 62nd Leg., p. 1942, ch. 587, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 362, ch. 159, § 1, eff. May 23, 1973.]

### Art. 4413(42). Commission for the Deaf

#### Commission

Sec. 1. In this Act "commission" means the State Commission for the Deaf.

#### Creation; Members; Appointment and Qualifications

Sec. 2. (a) The State Commission for the Deaf is created, consisting of six members to be appointed by the governor with the advice and consent of the Senate.

(b) Two members must be deaf and all members must be outstanding citizens of the State of Texas.

#### Terms; Vacancies

Sec. 3. (a) Each member holds office for a term of six years and until his successor is appointed and qualified.

(b) Two of the first six members appointed shall serve terms expiring January 31, 1973; two shall serve terms expiring January 31, 1975; and two shall serve terms expiring January 31, 1977.

(c) The governor shall appoint members to the commission immediately after this Act becomes effective.

(d) The governor shall fill vacancies occurring on the commission for the unexpired term.

#### Chairman

Sec. 4. The commission shall elect a chairman from among its members who shall serve for a period of one year, or until his successor is elected.

#### Meetings; Quorum; Expenses

Sec. 5. (a) The commission shall hold at least six meetings a year and shall make rules providing for the holding of special meetings.

(b) Four members of the commission constitute a quorum for the transaction of business.

(c) Members of the commission are entitled to receive reimbursement for their actual expenses in attending meetings of the commission and in carrying out their official duties.

#### Executive Director

Sec. 6. (a) The commission shall appoint a qualified person to serve as executive director.

(b) To be qualified to serve in the position of executive director, a person should preferably be a deaf or hard-of-hearing person.

#### Secretary; Employees

Sec. 7. The commission may employ a secretary and other employees it considers necessary to carry out the purposes of this Act.

**Duties and Powers**

Sec. 8. (a) The commission is the state agency responsible for rendering all services to the deaf except those services which are by law the responsibility of the welfare, educational, or other agencies of the state.

(b) The commission shall conduct a census of deaf persons in Texas and compile a current registry.

(c) The commission shall serve as an agency for the collection of information concerning the deaf and related matters and the dispensing of this information to interested persons.

(d) The commission may accept gifts, grants, and donations of money, personal property and real property for use in expanding and improving services to deaf persons of this state.

[Acts 1971, 62nd Leg., p. 2082, ch. 640, eff. June 4, 1971.]

**Art. 4413(43). Commission on Services to Children and Youth**

**Creation of Commission; Membership**

Sec. 1. The Texas Commission on Services to Children and Youth is established. The commission consists of the commissioner of health, the state commissioner of education, the chairman of the Coordinating Board, Texas College and University System, the commissioner of public welfare, the commissioner of mental health and mental retardation, the director of the Texas Department of Corrections, the director of the Texas Department of Public Safety, the executive director of the State Commission for the Blind, the executive director of the Texas Youth Council, the director of the Texas Employment Commission and the director of the Texas Rehabilitation Commission as permanent members. The commission also consists of 18 lay members, who must be widely representative of the racial, ethnic, and economic makeup of the population of the State of Texas, appointed by the governor with the advice and consent of the Senate. Six of the lay members must, at the time of appointment, be younger than 21 years of age.

**Terms of Office**

Sec. 2. The terms of office of the 18 lay members continue for a period of six years and until a successor is appointed and has qualified. Of the members first appointed by the governor, the terms of six members expire on January 31, 1973; the terms of six members expire on January 31, 1975; and the terms of six members expire on January 31, 1977.

**Chairman; Meetings**

Sec. 3. (a) The chairman of the commission shall be elected from its lay members. The chairman shall then preside over the election of other necessary officers from the entire commission. The governor shall name the first chairman, who shall serve until a successor is elected.

(b) The commission shall hold periodic meetings at a place designated by the commission. The governor shall call the first meeting.

**Duties of the Commission**

Sec. 4. (a) The commission shall assist in the coordination of the administrative responsibility and the services of the state agencies and programs as they relate to the well-being of children and youth.

(b) The commission shall undertake a continuous study of matters relevant to the protection, growth, and development of children and youth and from that study shall, on a priority basis, indicate periodically to the legislature necessary changes.

(c) The commission may undertake any other activities which it feels will encourage other public and private bodies throughout the state to engage in children and youth development programs.

(d) The commission shall perform any duties assigned to it by the governor or the Legislature concerning all past and future White House Conferences on Children and Youth.

**Expenses of Members**

Sec. 5. The members of the commission are entitled to receive their actual travel and other necessary expenses in the performance of their duties.

**Commission Budget**

Sec. 6. For budgetary purposes the commission is attached to and considered a part of the State-Local Relations Division of the Governor's Office or any successor agency to that division, with necessary expenses of operation to be financed by appropriations made by the Legislature.

**Commission Staff**

Sec. 7. For purposes of staff support, the commission may use staff available to it from the State-Local Relations Division of the Governor's Office or any successor agency to that division.

**Gifts and Grants of Money**

Sec. 8. The commission may accept gifts and grants of money from any individual, group, association, corporation, or the federal government and may expend the funds in accordance with the specific purpose for which given and under conditions that may be imposed by the donor.

**Annual Report**

Sec. 9. On or before the first day of December of each year the commission shall make in writing a complete and detailed report of its activities to the governor and to the presiding officer of each house of the legislature.

**Cooperation of Other Agencies**

Sec. 10. All state agencies, officers, and employees shall cooperate with the commission to the extent consistent with their functions. [Acts 1971, 62nd Leg., p. 2345, ch. 711, eff. June 7, 1971.]

**Art. 4413(44). Governor's Commission on Physical Fitness**

**Purpose**

Sec. 1. It shall be the purpose of this Act to increase the general level of physical fitness of the citizens of the State of Texas.

**Commission**

Sec. 2. In this Act, "commission" means the Governor's Commission on Physical Fitness.

**Creation; Appointment of Members; Term of Office; Vacancies**

Sec. 3. (a) The Governor's Commission on Physical Fitness is hereby created and established. The commission shall consist of fifteen (15) members representing all fields of physical fitness, including levels of fitness programs for both youth and adults, to be appointed by the Governor with the advice and consent of the Senate. The appointees should be widely known for their professional competence and experience in connection with physical fitness.

(b) The term of office for each member shall be for six (6) years, provided, however, that of the members first appointed, five (5) shall be appointed for terms of two years from the effective date of this Act, five (5) for terms of four (4) years from such effective date and five (5) for terms of six (6) years from such effective date. As the term of each member expires, his successor shall be appointed for a term of six (6) years except that each member shall serve until his successor is appointed and has qualified. Members shall be eligible for reappointment. Upon the death, disability, resignation, removal or refusal to serve of any member, the Governor shall appoint a qualified person to fill the unexpired term.

**Expenses**

Sec. 4. The members of the commission shall receive no compensation for their services, but shall be paid their actual traveling and other necessary expenses in the performance of their duties.

**Powers**

Sec. 5. The commission shall have power:

(a) to elect from its members a chairman and such other officers as may be desirable, provided that the first chairman of the commission shall be named by the Governor and shall call the first meeting of the commission and serve as such until his successor shall be elected by the commission;

(b) to hold such meetings at such places within the State of Texas and at such times as the commission may designate;

(c) to conduct such research, investigations and inquiries as may be necessary to secure information on the development of physical fitness in Texas;

(d) to appoint committees from its membership and prescribe their duties;

(e) to appoint consultants to the commission;

(f) to make rules and regulations for its operation and that of its committees and to prescribe the duties of its officers, consultants and employees;

(g) to employ a director and such other clerical employees as it may deem necessary within the limits of funds made available for such purposes.

**Duties and Responsibilities**

Sec. 6. The duties and responsibilities of the commission shall include:

(a) to educate the general public concerning the needs for, and benefits of physical fitness;

(b) to help coordinate the efforts in the field of physical fitness of the Central Education Agency, local school boards, private and parochial schools, industry, and physical fitness commissions of any political subdivision of this State now or hereafter created, and comparable agencies in other states or under the Federal Government;

(c) to disseminate information in the interest of physical fitness programs in this State by publication, conferences, workshops, programs, lectures, and other means;

(d) to collect and assemble pertinent information and data available from other state departments and agencies;

(e) to encourage, promote, and assist in the development of physical fitness programs for all ages;

(f) to evaluate existing programs within and outside Texas, to recommend the best programs and to provide for exchange of ideas and research data; and

(g) to inventory existing facilities and make recommendations for their optimum utilization.

**Report to Governor and Legislature**

Sec. 7. On or before the first day of December of each year the commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities.

**Appropriations**

Sec. 8. The Legislature of the State of Texas may appropriate the necessary funds for the purposes of carrying out the provisions of this Act.

**Acceptance of Donations; Audit**

Sec. 9. The commission may accept on behalf of the State of Texas such donations of money, property, and equipment as in its discretion will best further the orderly development of physical fitness in this State, includ-

ing the development of good or improved habits relating to recreation, exercises, sports and use of leisure time and instructions for these purposes and for improving the physique and health of the residents of this State. All funds shall be subject to audit by the State Auditor.

[Acts 1971, 62nd Leg., p. 2728, ch. 889, eff. June 14, 1971.]

**Art. 4413(45). Film Commission**

*Purpose*

Sec. 1. The purpose of this Act is to encourage the orderly development of the film, television, and multimedia production industry in Texas in order to utilize the State's vast array of natural, human, and economic resources which are uniquely suitable for that industry.

*Texas Film Commission*

Sec. 2. The Texas Film Commission is established as a division of the office of the Governor. It shall be composed of personnel employed by the Governor to assist in carrying out the provisions of this Act.

*Advisors*

Sec. 3. The Governor may appoint a group of citizens of this State to serve at his pleasure and advise him and the commission concerning the administration of this Act. They shall receive no compensation for their advisory service, but may be reimbursed for their actual and necessary expenses incurred in carrying out their duties.

*Powers and Duties of Commission*

Sec. 4. (a) The commission shall promote the development of the film, television, and multimedia industry in Texas by informing members of that industry and the general public of the resources available in this State for film, television, and multimedia production.

(b) The commission may cooperate with other agencies of the State under the provisions of the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). The commission shall cooperate with the Industrial Commission and all other branches of State and local government involved in attracting industry to Texas.

(c) The commission may contract and pay for the furnishing of goods and services necessary to accomplish the purposes of this Act.

(d) Members of the commission staff may travel inside or outside the State to perform their functions under this Act.

(e) The commission may apply for and receive gifts and grants from governmental or private sources to be used in carrying out its functions under this Act.

*Expenses*

Sec. 5. Expenses incurred under this Act for the current fiscal year shall be paid from the appropriation account for Item 4 of the appropriation to the office of the Governor in

Senate Bill No. 1, Acts of the 62nd Legislature, 3rd Called Session, 1972, for the year ending August 31, 1973.

[Acts 1972, 62nd Leg., 4th C.S., p. 29, ch. 13, eff. Oct. 26, 1972.]

**Art. 4413(46). Governor's Division of Planning Coordination**

*Need for Study to Make Recommendations to 64th Legislature*

Sec. 1. In view of the multitude of state agencies involved in and responsible for the conservation and protection of the natural resources and the environment, the extensiveness and complexity of the field of natural resources and environment, the possibility of overlapping and conflicting jurisdictions, powers, policies, and functions among the agencies, the probability that these are areas which should be controlled, but are not covered by existing legislation, and the need to maximize the prudent use of governmental manpower and revenues, the legislature recognizes the need for a study for the purpose of making recommendations to the 64th Legislature before it convenes in January, 1975.

*Coordination of State Agencies Involved in Conservation and Protection of Natural Resources and Environment*

Sec. 2. The governor shall through the division of planning coordination (hereinafter referred to as the division) coordinate the activities of and improve the communication and cooperation among all state agencies involved in and responsible for the conservation and protection of the natural resources and the environment of this state, including, but not limited to, the following agencies: The Texas Parks and Wildlife Department, the Texas Water Rights Commission, the Railroad Commission of Texas, the Texas Water Development Board, the Texas Water Well Driller's Board, the Texas Air Control Board, the State Department of Health, the State Highway Department, the Department of Public Safety, the State Soil and Water Conservation Board, the Department of Agriculture, the General Land Office, the Texas Industrial Commission, the Texas Forest Service, the Bureau of Economic Geology, the governor's office, the Attorney General of Texas, the Texas Aeronautics Commission, the Texas Water Quality Board, the Texas Department of Community Affairs, the Texas State Historical Survey Committee, the Texas Mass Transportation Commission, the Texas Council on Marine Related Affairs, the Texas Offshore Terminal Commission, Texas A&M University, The University of Texas, and other statewide planning and development organizations.

*Staff; Information, Expertise and Professional Services from Agencies*

Sec. 3. The governor shall employ or contract for the professional, technical, and clerical staff necessary to accomplish the purpose of this Act. The governor or the director of the division may call upon the agencies named

herein for information, expertise, and professional services.

**Comprehensive Study; Findings and Recommendations**

Sec. 4. The division shall provide for a comprehensive study of the relevant statutes, regulations, rules, functions, policies, jurisdictions, and problems, if any, of all state agencies responsible for and involved in the conservation and protection of the natural resources and the environment of the state for the purpose of making findings and any recommendations it may deem proper, including recommendations with respect to the following:

(1) improvement of cooperation, coordination, and communication between the agencies;

(2) the desirability of combining and transferring part or all of the jurisdiction, functions and powers of one or more existing agencies or offices into one or more agencies or into a state environmental coordinating agency; a plan whereby any such combination or transfer may be made in an orderly and systematic manner; and the jurisdictions, functions, powers and composition of any proposed state environmental agency; it being understood that the division shall not preclude the consolidation of one or more programs or activities into a single agency or office which the 63rd Legislature may create to combine any of the functions of any existing agencies;

(3) the desirability and means of eliminating duplication of functions and expenses by state agencies;

(4) possible conflicts between the statutes, regulations, rules, orders, and policies of state agencies;

(5) possible overlapping and duplication of jurisdiction of two or more agencies, and areas of the natural resources and environment that should be controlled and that are not covered by any existing legislation; and

(6) any legislative or constitutional changes that the governor deems necessary and proper to effect the recommendations.

**Interim and Final Reports; Transmittal and Availability**

Sec. 5. The division shall prepare a final report or reports of its study and recommendations to be submitted to the governor for transmittal to the 64th Legislature before it convenes in January, 1975, and any interim reports that the governor deems necessary. The governor shall provide a copy of the report or reports to every member of the legislature and to every agency involved in or responsible for the conservation and protection of the natural resources and the environment. The governor shall also make copies of the report or reports available to the public.

**Agencies to Provide Information and Assist Division**

Sec. 6. Every state agency, department, and institution, and the staff and personnel of every state agency, department, and institution, and every state agency, department, and officer is directed to provide such information as may be requested by the governor or the director of the division, and to assist the division in accomplishing its purposes, including providing any legal and technical expertise requested by the division.

**Interagency Planning Councils; Advisory Committee**

Sec. 7. The governor shall utilize appropriate interagency planning councils in an advisory capacity, and may appoint an advisory committee of persons knowledgeable in the field of natural resources and the environment to assist in carrying out the purposes of this Act, including the review of reports and recommendations, and to assist in the drafting of any recommended legislation.

**Expiration of Act**

Sec. 8. The provisions of this Act shall expire June 1, 1975, unless extended by the legislature.

**Severability**

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

[Acts 1973, 63rd Leg., p. 1339, ch. 505, eff. June 14, 1973.]

**CHAPTER TEN. DEPARTMENT OF COMMUNITY AFFAIRS**

**Art. 4413(201). Department of Community Affairs**

**Purpose**

Sec. 1. The purpose of this Act is to create a Texas Department of Community Affairs to assist local governments in providing essential public services for their citizens and overcoming financial, social, and environmental problems; to assist the Governor and the Legislature in coordinating federal and State programs affecting local government; and to continually inform State officials and the public about the needs of local government.

**Definitions**

Sec. 2. As used in this Act:

(1) "Department" means the Texas Department of Community Affairs.

(2) "Director" means the executive director of the Texas Department of Community Affairs.

(3) "Local government" means a county; an incorporated municipality; a spe-



cial district; any other legally constituted political subdivision of the State; or a combination of political subdivisions.

Creation

Sec. 3. There is hereby established a Texas Department of Community Affairs.

Functions

Sec. 4. The department shall, in addition to other powers and duties invested in it by this Act or by any other law:

- (1) maintain communications with local governments and serve as their advocate at the State and federal levels;
- (2) assist local governments with advisory and technical services;
- (3) provide financial aid to local governments and combinations of local governments for programs which are authorized such assistance;
- (4) act as an information center and referral agency for information on State and federal services and programs affecting local government;
- (5) administer, conduct, or jointly sponsor educational and training programs for local government officials;
- (6) maintain suitable headquarters for the department and such other quarters as the director shall deem necessary to the proper functioning of the department;
- (7) conduct research on problems of general concern to local governments;
- (8) collect, publish, and disseminate information useful to local government including, but not limited to, data on local governmental finances and employment, housing, population characteristics, and land use patterns;
- (9) encourage cooperative action by local governments where appropriate;
- (10) advise and inform the Governor and the Legislature concerning the affairs of local government and make recommendations for necessary action;
- (11) assist the Governor in the coordination of federal and State activities affecting local governments;
- (12) administer, as appropriate, State responsibilities for programs created under the Federal Economic Opportunity Act of 1964 and other federal acts creating economic opportunity programs;
- (13) perform any other duties concerning local government which may be assigned by the Legislature or the Governor.

Personnel

Sec. 5. The administrator and head of the department shall be known as the executive director and shall be a person qualified by training and experience to perform the duties of his office. The director shall be appointed by the Governor with the advice and consent of

the Senate and shall serve at the pleasure of the Governor during the Governor's terms of office. He shall receive a salary as provided by the Governor within authorized appropriations. The director, as head of the department, shall:

- (1) administer the work of the department;
- (2) appoint and remove officers and other personnel employed within the department;
- (3) submit through and with the approval of the Governor requests for appropriations and other moneys to operate the department;
- (4) administer all moneys entrusted to the department;
- (5) organize the work of the department consistent with this Act and with sound organizational management designed to promote efficient and effective operation;
- (6) make an annual report to the Governor and the Legislature of the department's operations and provide such other reports as the Governor or the Legislature shall require;
- (7) perform such other functions as may be prescribed by law or assigned by the Governor.

Advisory Council on Community Affairs

Sec. 6. There is hereby established in the Department of Community Affairs an Advisory Council on Community Affairs of thirteen (13) members, which shall consist of the director as chairman ex officio, and twelve (12) other members appointed by the Governor with the advice and consent of the Senate, as follows:

- (1) One member shall be the mayor of a municipality of this State having a population of less than 20,000 inhabitants at the time of his or her appointment;
- (2) One member shall be the mayor of a municipality of this State having a population of not less than 20,000 nor more than 249,999 inhabitants at the time of his or her appointment;
- (3) One member shall be the mayor of a municipality of this State having a population of 250,000 or more inhabitants at the time of his or her appointment;
- (4) Five (5) members shall be appointed at large from among the citizens of this State;
- (5) One (1) member shall be appointed from among the membership of each of the four (4) following organizations:
  - (a) Texas Association of School Boards;
  - (b) Texas Association of Counties;
  - (c) Texas Municipal League;
  - (d) A duly constituted regional planning commission in this State.

Any elected or appointed official of any local government who shall be appointed as a member of the Advisory Council on Community Affairs or as a member of any special advisory council as provided for in Section 7 of this Act shall perform his duties as a member of such advisory council or councils as an additional or ex officio duty required of him in his other official capacity, and such service on such advisory council or councils shall not be construed as dual office holding. Of the members first to be appointed, six (6) shall be appointed for a term of office to expire on January 31, 1972, and six (6) shall be appointed for a term of office to expire on January 31, 1973. Successors of all members first appointed shall be for two-year terms. Vacancies on the Advisory Council on Community Affairs, other than by expiration of terms of office, shall be filled for the unexpired term. All members of the council shall serve without compensation but shall be reimbursed for their actual expenses in attending the meetings of the council and in the performance of their other duties. It shall be the duty of the council to consult with and advise the director with respect to the affairs and problems of local government and work of the department. The council shall meet at least three times annually at the call of the director and at such other times as the council shall determine, the time and place of such other meetings to be fixed by resolution of the council. It shall be the responsibility of the department to furnish such information, equipment and staff as is necessary to implement the work of the council within the limits of appropriations for the purpose.

#### Special Advisory Councils

Sec. 7. The Governor may, with the advice of the director, from time to time appoint other special advisory councils to assist in basic policy formulation for the department or to advise on technical aspects of certain programs the department may administer. Special advisory councils may be dissolved by the Governor upon completion of their purpose.

#### Acting Director

Sec. 8. The Governor shall establish a procedure for designation of an acting director in the event of an absence or disability of the director and shall immediately designate an acting director or a new permanent director in the event of a vacancy in the position.

#### Offices and Divisions

Sec. 9. The director shall establish such offices and divisions as necessary to carry out the functions of the department, and these functions shall include: intergovernmental cooperation, regional and community services, rural community services, housing, research, economic opportunity, and education and training. The director is authorized to assign functions and duties to the various offices and divisions, to provide for additional offices and divisions, and to reorganize the department when neces-

sary to improve efficiency or effectiveness. The director is further authorized to enter into reciprocal agreements to loan or detail department employees to State agencies and instrumentalities and to local governments.

#### Transfers from Governor

Sec. 10. The Governor is hereby authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the Division of State-Local Relations and of other appropriate divisions of his office to the department.

#### Loaned Employees

Sec. 11. Agencies and instrumentalities of the State government and local governmental units are authorized to detail or loan employees to the department on either a reimbursable or nonreimbursable basis as may be mutually agreed by the State agency or local governmental unit and the department. The department is authorized to accept such employees. During the period of loan or detail, the person shall continue to be an employee of the lending agency or unit for purposes of salary, leave, retirement, and other personnel benefits, but shall work under the supervision of personnel of the department and shall be an employee of the department for all other purposes. The department is authorized to enter into contracts with State agencies or other governmental units for reimbursing all costs incidental to the loaning or detailing of employees.

#### Agency Cooperation

Sec. 12. Agencies and institutions of the State are directed to cooperate with the department through provision of personnel, information, and technical advice as the department assists the Governor in the coordination of federal and State activities affecting local government.

#### Funds

Sec. 13. The department is authorized to apply for contract for, receive, and expend for its purposes any appropriations or grants from the State of Texas, the federal government, or any other source, public or private.

#### Multipurpose Human Resource Centers

Sec. 13a. (a) In order to provide for the most effective and efficient delivery of human resource services to the poor population, as well as the total population, the Texas Department of Community Affairs may establish multipurpose human resource centers in various communities in the State.

(b) The department may locate and lease with State funds suitable office space at the community level that is easily accessible to the client populations of human resource service delivery agencies and may make it available to these agencies.

(c) Any State or local governmental agency or private, nonprofit human resource agency

that has filed a State or regional plan for delivery of human resource services with the State is eligible to locate staff in a community multipurpose human resource service center.

(d) The department shall report to the Governor and the Legislature annually the agencies which are and the agencies which are not locating their human resource delivery staff in available community multipurpose human resource service centers.

(e) There is hereby established in the State Treasury the Community Multipurpose Human Resource Service Center Fund. The fund shall be used to provide the State's share of the rental costs for the community multipurpose

human resource service centers and to provide for the administrative costs of their operation.

Severability

Sec. 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2697, ch. 879, eff. June 10, 1971; Acts 1973, 63rd Leg., p. 1636, ch. 595, § 1, eff. Aug. 27, 1973.]

# TITLE 71

## HEALTH—PUBLIC

Chapter	Article	Article
1. Health Boards and Laws .....	4414	4418e. Acting Commissioner of Health.
2. Special Quarantine Regulations .....	4448	4418f. Commissioners' Court to Make Appropriations.
3. Food and Drugs .....	4465	4419. General Duties and Powers.
3A. Bedding .....	4476a	4419a. Cooperation with United States Public Health Service for Eradication of Malaria.
4. Sanitary Code .....	4477	4419b. Cooperation with United States in Controlling Malaria.
4A. Sanitation and Health Protection .....	4477-1	4419c. Physical Restoration Service for Crippled Children.
4B. Texas Tuberculosis Code .....	4477-11	4419d. Payment for Treatments of Crippled Children and of Patients from State Eleemosynary Institutions.
4C. Kidney Disease .....	4477-2	4419e. Blind and Otherwise Handicapped Persons; Use of Public Facilities.
5. County Hospital .....	4478	4420. May Enter and Inspect.
6. Medicine .....	4495	4420a. Entry of Private Residence for Health Inspection; Penalties.
6½. Abortion .....	4512.1	4420b. Industrial Homework.
6A. Chiropractors .....	4512a-1	4421. Investigations by Board.
6B. Psychology .....	4512c	4422. No County Physician.
6C. Athletic Trainers .....	4512d	4423. County Health Officer.
6D. Physical Therapy .....	4512e	4424. No City Physician.
7. Nurses .....	4513	4425. City Health Officer.
8. Pharmacy .....	4529	4426. Health Officers Appointed by Board, When.
9. Dentistry .....	4543	4427. Duties of County Health Officer.
10. Optometry .....	4552-1.01	4428. Removal of County Health Officer.
10A. Hearing Aids .....	4566-1.01	4429. Charges Against County Health Officer.
11. Podiatry .....	4567	4430. Duties of City Health Officer.
12. Embalming .....	4576	4431. City Health Officer Removed.
13. Anatomical Board .....	4583	4432. Charges Against City Health Officer.
14. Group Hospital Service [Repealed] .....	4590a	4433. Annual Conference.
15. Ambulances .....	4590b	4434. Co-operation.
16. Basic Sciences .....	4590c	4435. In Unincorporated Towns.
17. Naturopathy [Repealed] .....	4590d	4436. Health Control in Cities, Towns, and Villages.
18. Identification of System of Healing .....	4590e	4436a-1. City-County Health Units in Counties Containing Incorporated City.
19. Nuclear and Radioactive Materials .....	4590f	4436a-2. Tax Levy to Create Health Units in Counties of 22,200 to 22,500 Authorized.
		4436a-3. Tax Levy to Create Health Units in Counties Under 22,000 Authorized.
		4436a-4. County Public Health Units or Centers in Counties of More Than 100,000 Population.

### CHAPTER ONE. HEALTH BOARDS AND LAWS

Article	Article
4414. Repealed.	4437. Hospitals.
4414a. State Department of Health Established.	4437a. Hospital Control in Counties of 200,000 or Over; Tuberculosis Control.
4415. Repealed.	4437b. Tax for County Hospitals.
4415a. Composition of State Board of Health, Appointment, Term of Office.	4437c. Lease of City and County Hospitals.
4416. Repealed.	4437c-1. Lease of City Hospital.
4416a. Organization and Meetings of State Board of Health.	4437d. Texas Hospital Survey and Construction Act.
4417. Repealed.	4437e. Hospital Authority Act.
4417a. Compensation of Members of State Board of Health.	4437e-1. Leases and Agreements by Hospital Authorities.
4418. Repealed.	4437f. Texas Hospital Licensing Law.
4418a. Powers and Duties of the State Board of Health.	4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population.
4418b. Commissioner of Health; Qualifications; Executive Head of State Department of Health.	4437g. Internship or Residency of Foreign Medical School Graduates.
4418b-1. Office of State Health Officer Abolished; Commissioner of Health, Office Created; Transfer of Powers and Duties.	4438. Indigent Sick.
4418c. Commissioner of Health to Execute Bond.	4439. Isolation of Lepers.
4418d. Duties of Commissioner of Health.	4440. Repealed.
	4441. Protecting Eyes of New-born.
	4441a. Protecting Eyes of New-born; Penalty.
	4442. Repealed.
	4442a. Day Nursery for Care and Custody of Children.
	4442b. Repealed.

## Article

- 4442c. Convalescent and Nursing Homes and Related Institutions.
- 4442c-1. Construction or Expansion of Nursing or Convalescent Homes; Public Loans; Certificate of Need.
- 4442d. Nursing Home Administrators Licensure Act.
4443. Omitted.
- 4443a. Federal Aid Accepted.
4444. Repealed.
4445. Venereal Diseases.
- 4445a. Prenatal Examination for Syphilis.
- 4445b. Repealed.
- 4445c. Laboratory Tests for Venereal Diseases; Reporting Results.
4446. Legal Proceedings.
4447. Charbon Districts.
- 4447a. Coordinated Health Program.
- 4447b. Repealed.
- 4447c. Texas Coordinating Commission for State Health and Welfare Services.
- 4447d. Providing State Department of Health with Data on Condition and Treatment of Persons.
- 4447d-1. Inadmissibility as Evidence of Immunization Survey Data.
- 4447e. Phenylketonuria.
- 4447f. Duty of State Department of Health to Recommend Policies Relating to Medical Aspects of Driver Licensing, Traffic Safety and Accident Investigation.
- 4447g. Psychological and Audiological Tests for Deaf or Hard-of-Hearing Persons.
- 4447h. Repealed.
- 4447i. Consent of Minors to Treatment for Drug Abuse.
- 4447j. Capacity of Minors to Donate Blood; Compensation.
- 4447k. Control and Eradication of Pediculosis in Minors.
- 4447l. Youth Camp Safety and Health Act.
- 4447m. Costs of Medical Examinations of Rape Victims.
- 4447n. Filing and Copies of Autopsy Reports.
- 4447o. Coordinated Emergency Medical Services Division of State Department of Health.
- 4447p. Reporting Treatment of Gunshot Wound.
- 4447q. Misrepresentation of Nonresident in Application for Medical Aid.

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

**Art. 4414a. State Department of Health Established**

To better protect and promote the health of the people of Texas, there is hereby established the State Department of Health, which Department shall consist of a State Board of Health, a State Health Officer<sup>1</sup> and his administrative staff, and which shall have the general powers and duties authorized and imposed by the provisions of this act.<sup>2</sup>

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 1.]

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

<sup>2</sup> Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

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

**Art. 4415a. Composition of State Board of Health, Appointment, Term of Office**

The State Board of Health shall consist of nine (9) members, who shall be appointed by the Governor and confirmed by the Senate, and

who shall have the following qualifications: Six (6) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and graduates of recognized medical colleges; of the six (6) members of the Board first appointed under the provisions of this Act, two (2) shall serve for a period of two (2) years, two (2) for a period of four (4) years, and two (2) for a period of six (6) years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. Upon the passage of this Act, the Governor shall appoint three (3) members of the Board in addition to the six (6) members now constituting the State Board of Health; one (1) such new member shall be a Doctor of Dentistry, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Dentistry in this State; one (1) such member shall be a Pharmacist, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Pharmacy in this State; and one (1) such member shall be a graduate of some reputable engineering school upon whom such school has conferred the degree of Civil Engineering, and who, since graduation for at least five (5) years, has specialized in sanitary engineering in actual work in this State. The terms of office of the six (6) present members of the Board shall not be affected by this Act, and the terms of office of the three (3) additional members shall be so arranged that one (1) shall serve for two (2) years, one (1) for four (4) years, and one (1) for six (6) years. After the expiration of the terms of the first appointees to the Board the terms of all members shall be for six (6) years. The additional members shall be allowed the same compensation in attending meetings of the Board, as well as traveling expenses, as provided by this Chapter. The State Health Officer shall be a member ex-officio of the Board, but shall not have the right to vote. The Board shall elect a Chairman from among the nine (9) members of the Board, who shall serve for a period of two (2) years or until his successor is elected. [Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 2; Acts 1931, 42nd Leg. p. 445, ch. 266 § 1.]

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

**Art. 4416a. Organization and Meetings of State Board of Health**

A majority of the members of the State Board of Health, exclusive of the members ex-officio, shall constitute a quorum for the transaction of business. The Board shall elect one of its members a Vice-Chairman, who shall proceed in the absence of the Chairman. The Board shall meet at Austin quarterly, on a date

to be fixed by the Board, and shall hold such special meetings as may be called by the State Health Officer<sup>1</sup> or any two members of the Board. Timely notice of such special meetings shall be given to each member.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 3.]

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

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

**Art. 4417a. Compensation of Members of State Board of Health**

The nine members of the State Board of Health, excepting the member ex-officio, shall receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of Twenty Dollars (\$20.00) including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Commissioner of Health, provided no member shall receive more than One Thousand Dollars (\$1,000.00) annually, including expenses. The members of the State Board of Health and the Commissioner of Health shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 4; Acts 1959, 56th Leg. 3rd C.S. p. 381, ch. 6 § 1.]

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

**Art. 4418a. Powers and Duties of the State Board of Health**

The State Board of Health shall have the following powers and duties:

(1) To elect, by a majority vote of the whole membership of the Board, a State Health Officer<sup>1</sup>, who shall be executive of the State Department of Health, subject to the further provisions of this Act<sup>2</sup>; and to suspend or remove said officer for good and sufficient cause, sustained by a majority of the Board membership; provided, that said officer shall not be removed until he has been given a hearing before said Board, if he so elects. Immediately after the appointment of a new State Board of Health, as provided in this Act, said Board shall organize, and appoint a State Health Officer, who shall serve as such, unless sooner removed as above provided, until the last regular quarterly meeting of the Board in 1928; and at such meeting, and every two years thereafter, the State Board of Health shall appoint a State Health Officer, who shall serve, unless

sooner removed as above provided, for a term of two years and until his successor shall be appointed and shall have qualified.

(2) To investigate the conduct of the work of the State Department of Health, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof.

(3) To adopt rules, not inconsistent with law, for its own procedure, a copy of which rules shall be filed in the State Department of Health.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 5].

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

<sup>2</sup> Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

**Art. 4418b. Commissioner of Health; Qualifications; Executive Head of State Department of Health**

The Commissioner of Health shall be a legally qualified physician, licensed to practice medicine in the State of Texas, of good professional standing, and a graduate of a recognized medical school whose credits are recognized and acceptable by the University of Texas Medical School; and if not a resident of the State of Texas, he shall establish residence in the State of Texas immediately upon election by the State Board of Health to the capacity of Commissioner of Health. The State Commissioner of Health shall be the executive head of the State Department of Health; he shall devote his whole time to the duties of this office, and shall not engage in the private practice of medicine during his term of office.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 6; Acts 1957, 55th Leg. p. 1418, ch. 488 § 1.]

**Art. 4418b-1. Office of State Health Officer Abolished; Commissioner of Health, Office Created; Transfer of Powers and Duties**

Sec. 1. There is hereby created in the Department of Health the office of Commissioner of Health and the office of State Health Officer is hereby abolished.

Sec. 2. All those powers and duties heretofore assigned to the State Health Officer shall be vested in the Commissioner of Health. Nothing in this Act shall be construed as removing any authority, duty or responsibility now vested in the State Health Officer. The only purpose is to change the name from State Health Officer to Commissioner of Health.

Sec. 3. All other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except in so far as the same may be in conflict with the provisions of this Act.

[Acts 1955, 54th Leg. p. 586, ch. 195.]

**Art. 4418c. Commissioner of Health to Execute Bond**

The State Health Officer<sup>1</sup> shall execute a bond, in the sum of Ten Thousand Dollars (\$10,000.00), payable to the Governor, with two or more good and sufficient sureties thereon, or with some Surety Company authorized to do business in this State, as surety, conditioned for the faithful performance of his official duties, the bond to be approved by the Governor and filed in the office of the Secretary of State.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 7.]

<sup>1</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 105, § 1. See art. 4418b-1.

**Art. 4418d. Duties of Commissioner of Health**

The State Health Officer<sup>1</sup> shall be the executive head of the State Department of Health, and he shall, subject to the provisions of this Act,<sup>2</sup> exercise all the powers and discharge all the duties now vested by law in the Texas State Department of Health and the State Health Officer, as well as all powers now vested by law in any officer, assistant, director or bureau head of the State Department of Health, excepting only such powers as may be conferred by this Act upon the State Board of Health hereby created. The State Health Officer, with the approval of the State Board of Health, may organize and maintain within his Department such divisions of service as are deemed necessary for the efficient conduct of the work of the Department. From time to time, he shall appoint directors of such divisions, as well as other employees of the Department, and shall designate the duties and supervise the work of all such directors and employees. He shall have the power, with the approval of the State Board of Health, to prescribe and promulgate such administrative rules and regulations, not inconsistent with any law of the State, as may be deemed necessary for the effective performance of the duties imposed by this or any other law upon the State Department of Health and its several officers and divisions.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42 § 8.]

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

<sup>2</sup> Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

**Art. 4418e. Acting Commissioner of Health**

The State Health Officer,<sup>1</sup> with the approval of the State Board of Health, shall from time to time designate one of the directors of the Department Divisions, who is a legally qualified physician, as acting State Health Officer, and the persons so designated shall have the full authority and perform the duties of the State Health Officer in the event of his absence from the Capitol or inability to act.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42, § 9.]

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

**Art. 4418f. Commissioners' Court to Make Appropriations**

It shall be lawful for the State Department of Health to accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County.

[Acts 1927, 40th Leg. 1st C.S. p. 131, ch. 42, § 10.]

**Art. 4419. General Duties and Powers**

The State Board of Health shall have general supervision and control of all matters pertaining to the health of citizens of this State, as provided herein. It shall make a study of the causes and prevention of infection of contagious diseases affecting the lives of citizens within this State and except as otherwise provided in this chapter shall have direction and control of all matters of quarantine regulations and enforcement and shall have full power and authority to prevent the entrance of such diseases from points without the State, and shall have direction and control over sanitary and quarantine measures for dealing with all diseases within the State and to suppress same and prevent their spread. The president of the board shall have charge of and superintend the administration of all matters pertaining to State quarantine.

[Acts 1925, S.B. 84.]

**Art. 4419a. Cooperation with United States Public Health Service for Eradication of Malaria**

The State Board of Health is hereby authorized, empowered and directed to co-operate with the United States Public Health Service in instituting an intense campaign toward the control and eradication of malaria in Texas. The work shall first be begun in such sections as may be deemed by said Board and Health Service as sufficiently affected to need immediate relief and attention. Efforts shall be made immediately to suppress and remedy the conditions existing in the rural areas of Texas, shown to exist by the recent survey to be acutely infested with malaria, where the greatest need for control and eradication of this impoverishing disease exists.

[Acts 1931, 42nd Leg. p. 61, ch. 41 § 1.]

**Art. 4419b. Cooperation with United States in Controlling Malaria**

The State Board of Health is hereby authorized and empowered to cooperate with the United States Public Health Service in continuing the campaign toward the control and eradication of malaria in Texas.

[Acts 1933, 43rd Leg. 1st C.S. p. 80, ch. 26 § 1.]

### Art. 4419c. Physical Restoration Service for Crippled Children

#### Creation of Service; Aid to Needy Children Distinguished

Sec. 1. There is hereby created in the State Department of Health a physical restoration service for crippled children under twenty-one (21) years of age. This service shall make provisions for locating, examining and physically restoring crippled children of the State as hereinafter provided. The physical restoration service herein provided for crippled children is separate and distinct from the assistance or aid to needy children.

#### "Crippled Child" Defined; Eligibility

Sec. 2. A crippled child is defined as any person under twenty-one (21) years of age, whose physical functions, movements, or sense of hearing are impaired by reason of a joint, bone, ossicular chain, or muscle defect or deformity, to the extent that the child is or may be expected to be totally or partially incapacitated for education or remunerative occupation. To be eligible for rehabilitation service under this Act, the child's disability must be such that it is reasonable to expect that such child can be improved through hospitalization, medical or surgical care, optometric care, artificial appliances, or through a combination of these services. For the purposes of this Act, a "crippled child" includes a child whose sole or primary handicap is blindness or other substantial visual handicap, but the responsibility for rendering services to a child crippled with blindness or other substantial visual handicap is that of the Commission for the Blind.

#### Powers of Crippled Children's Division; Administration of Properties; Rules and Regulations

Sec. 3. The Crippled Children's Division of the State Department of Health is empowered to take census, make surveys and establish permanent records of crippled children; to procure medical and surgical service for crippled children, provided that only physicians legally qualified to practice medicine and surgery in Texas be employed for purposes of diagnosis and treatment, that not more than the customary minimum fees be paid for such services, and that physicians or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of crippled children contemplated by this Act, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the State Department of Health, transportation, appliances, braces and material necessary in the proper handling of crippled children may be in part or entirely provided. Such appliances, braces and material, being a part of the care and treatment program and necessary to the physical restoration of the individual crippled child as defined in this Act, shall not be considered to be state-owned personal property and shall be excluded from the personal property inventory required of state-owned property; and all such property

including appliances, braces, and materials, being a part of the care and treatment program, and which are now being accounted for under the provisions of the present system of accounting shall be deleted from and not required after the passage and effective date of this Act. The State Department of Health, however, shall maintain at all times a complete record of such appliances, braces and materials provided and such records shall be verified by the State Auditor.

The State Department of Health is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selections of physicians and hospitals, and shall arrange with hospitals, brace departments and other services providing for crippled children's work, compensation for such services, provided that such fees or charges shall not exceed the average charges for the same services rendered to patients in the hospitals approved for purposes of this Act.

#### Right to Care and Treatment; Entering Homes; Death of Hospitalized Patient; Expenses

Sec. 4. No child shall be entitled to the care and treatment provided in this Act unless the county judge of the county in which the child resides shall certify to the State Department of Health upon sworn petition of the parents of said child, or persons standing in loco parentis, proven to the satisfaction of said judge, that the parents of said child, or persons standing in loco parentis, are financially unable to provide for said care and treatment.

That children whose parents, or those in loco parentis are financially able to pay in part for such treatment and care may be provided for by the State Department of Health under such rules and regulations as may be prescribed by the Department of Health.

Provided further that said county judge must also certify that one or more physicians, regularly practicing under the laws of the State of Texas, have examined said child and have recommended said child as coming under the provisions and intent of this Act. Provided further that no judge or official agent shall, by virtue of this Act, have any right to enter any home over the objection of the parents, or either of them, or the person standing in loco parentis of such child, and nothing in this Act shall be construed as limiting the power of a parent or guardian or person standing in loco parentis over such child.

Provided further that funds of the Division of Crippled Children's Services may be expended for the care of any patients either under the regular Crippled Children's Program or the Cardiac Program who expire while being hospitalized under the State Program for the following:

Transportation of the deceased and a parent or anyone who may accompany the



body of the deceased from the hospital to the place of burial designated by the parents.

Expenses incidental to embalming of the deceased as required for transportation.

A casket purchased at the minimum price as required for transportation.

Any other necessary expenses directly related to the care of the body of the deceased and the return of the body to place of burial.

#### Rules and Regulations; Personnel

Sec. 5. The State Board of Health is authorized to make such rules, regulations, policies, and employ such personnel as is necessary to carry out the provisions of this Act, and to secure such clerical assistance, equipment and supplies as are needed.

#### Gifts and Donations

Sec. 6. The State Department of Health is authorized to receive gifts and donations for this work. All gifts and donations for crippled children's work shall be paid into the State Treasury and the same are hereby reappropriated for the purposes of this Act. The Treasurer of the State of Texas shall pay out all money and funds provided for in this Act upon proper warrant issued by the Comptroller of the State of Texas drawn upon vouchers approved by the State Department of Health and the Department of Health shall report annually to the Governor amounts received and expended and work accomplished.

#### State Department of Health; Duties

Sec. 8. The State Department of Health is empowered and directed to take all action necessary to accomplish the purposes provided or implied by this Act, and to cooperate with public agencies, Federal, State, county and local, and with private agencies and individuals interested in the welfare of crippled children.

The State Department of Health is hereby designated as the agency to receive funds which are appropriated by the Federal Government to be used in the State of Texas in matching State funds which are appropriated by the Legislature, or to receive any other funds which are not required to be matched by the Legislature for the physical restoration of crippled children as provided for in this Act.

[Acts 1945, 49th Leg. p. 298, ch. 216; Acts 1961, 57th Leg., p. 33, ch. 21, §§ 1, 2; Acts 1965, 59th Leg., p. 243, ch. 106, § 3; Acts 1965, 59th Leg., pp. 299, 300, ch. 132, §§ 1, 2; Acts 1965, 59th Leg., p. 574, ch. 291, § 3; Acts 1967, 60th Leg., p. 558, ch. 245, eff. Aug. 28, 1967.]

#### Art. 4419d. Payment for Treatments of Crippled Children and of Patients from State Eleemosynary Institutions

The State Comptroller of Public Accounts is hereby authorized to draw proper warrants in favor of either the University of Texas School of Medicine, the John Sealy Hospital, or the State Hospital for Crippled and Deformed Children at Galveston based on vouchers or

claims submitted by said institutions covering reasonable fees and charges for hospitalization and professional services rendered by members of the staffs of said institutions in the care, diagnosis, and treatment of crippled children under the provisions of Chapter 216, Acts, Regular Session, Forty-ninth Legislature,<sup>1</sup> and in the hospitalization, care, and treatment of patients forwarded to said institutions from the State Eleemosynary Institutions under the direction of the State Board of Control, and the State Treasurer is hereby authorized and directed to pay warrants so issued against any available funds appropriated, granted, or donated to the Crippled Children's Division of the State Department of Health or the State Department of Health for the purpose of defraying the expenses of the treatment of crippled children under said Act and out of available funds appropriated to the State Board of Control for the hospitalization, care, and treatment of patients in and from the State Eleemosynary Institutions under the direction of said State Board of Control. Such payments made to said institutions shall be credited and deposited to the local institutional funds of said institution receiving such payments.

[Acts 1947, 50th Leg. p. 474, ch. 274, § 1.]

<sup>1</sup> Article 4419c.

#### Art. 4419e. Blind and Otherwise Handicapped Persons; Use of Public Facilities

##### Policy

Sec. 1. The policy of the State of Texas is to encourage and enable persons who are blind or otherwise physically handicapped to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.

##### Definitions

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

(1) "White cane" means a cane or walking stick which is metallic or white in color or white tipped with some contrasting color, and which is carried by a blind person to assist the blind person in travelling from place to place.

(2) "Dog guide" means a dog which:

(A) is fitted with a special harness so as to be suitable as an aid to the mobility of a blind person,

(B) is used by a blind person who has satisfactorily completed a specific course of training in the use of a dog as an aid to personal travel, and

(C) has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind as reputable and competent to provide dogs with training of this type;

(3) "Public facilities" include streets, highways, sidewalks, walkways, all com-

mon carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, motels or other places of lodging, public buildings maintained by any unit or subdivision of government, buildings to which the general public is invited, college dormitories and other educational facilities, restaurants or other places where food is offered for sale to the public, and all other places of public accommodation, amusement, convenience or resort to which the general public or any classification of persons from the general public is regularly, normally or customarily invited.

(b) Terms or phrases not specifically defined in this section shall be given the meaning usually given to such terms or phrases as a matter of common knowledge.

#### Discrimination Prohibited

Sec. 3. (a) Subject only to such limitations and conditions as might be established by law and applicable alike to all persons, persons who are blind or otherwise physically handicapped shall have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

(b) No common carrier, airplane, railroad train, motor bus, street car, boat or other public conveyance or mode of transportation operating within the State of Texas may refuse to accept as a passenger any person who is blind or otherwise physically handicapped solely because of such person's handicap, nor shall any handicapped person be required to pay an additional fare because of his use of a dog guide, wheelchair, crutches or other types of devices used to assist the handicapped person in travel.

(c) No person who is blind or otherwise physically handicapped, regardless of whether or not using a white cane, dog guide, wheelchair, crutches or other devices of assistance in mobility, may be denied admittance to any public facility in the State of Texas because of the handicapped person's use of a white cane, dog guide, wheelchair, crutches or other devices of assistance in mobility, or because such person may be handicapped.

(d) The discrimination prohibited by this section includes discrimination through an open and obvious refusal to allow a handicapped person to use or be admitted to any public facility, as well as discrimination based upon a ruse or subterfuge calculated to prevent or discourage a handicapped person from using or being admitted to a public facility. Regulations relating to the use of public facilities by any designated class of persons from the general public shall in no manner be drafted to prohibit the use of particular public facilities by handicapped persons who, except for their handicaps and use of dog guides or other devices for assistance in travel, would fall within

the designated class. Lists containing the names of persons who desire to use particular public facilities shall not be composed or manipulated so as to deny a handicapped person a fair and equal opportunity to use or be admitted to any public facility.

(e) No provision of this Act shall be construed as in any manner limiting the prerogative of the owner or manager of any public facility to refuse to admit, to refuse to serve or to evict from a public facility any person who is so unkempt as to be clearly offensive to others using the public facility, or who is obviously intoxicated, or who conducts himself in a belligerent, boisterous, profane or other offensive manner which unreasonably interferes with the right of other persons to use and enjoy the public facility.

#### Responsibilities of Persons Who are Blind or Otherwise Physically Handicapped

Sec. 4. (a) A person who is blind and who uses a dog guide to assist him in travel shall be liable for any damages done to the premises of facilities by such dog.

(b) A person who is blind and who uses a dog guide to assist him in travel shall keep such dog guide properly harnessed, and any person who might be injured by such dog guide because of a blind person's failure to properly harness the dog guide shall be entitled to maintain a cause of action for damages in any court of competent jurisdiction within this state, subject to the same rules, principles and doctrines as are applicable under the common law of this state to other causes brought for the redress of injuries caused by animals.

(c) A person who is blind or otherwise physically handicapped and who, after being duly warned of a danger unique to a handicapped person's use of a particular public facility, is injured in using the public facility and is injured because of a danger of the type about which warning was given, shall be deemed to have assumed the risk of using the public facility.

#### Penalties for Improper Use of Dog Guides

Sec. 5. (a) Any person who fits a dog with a harness of the type commonly used by blind persons who use dog guides for purposes of travel, in order to represent that his dog is a specially trained dog guide when training of the type described in Section 2 of this Act has not in fact been provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred Dollars (\$200.00).

(b) Any person who habitually abuses or neglects to feed or otherwise neglects to properly care for his dog guide shall be entitled to none of the benefits of this Act otherwise available to those who use dog guides, but shall instead be required to surrender his dog guide upon demand to the person or organization furnishing the dog or to other competent authorities.

**Penalties For and Damages Resulting from  
Discrimination**

Sec. 6. (a) Any person or persons, firm, association, corporation, or other organization, or the agent of any person, firm, association, corporation or other organization who shall violate the provisions of Section 3 of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00).

(b) In addition to the penalty provided for in Subsection (a) of this Section, any person or persons, firm, association, corporation or other organization, or the agent of any person, firm, association, corporation or other organization who shall violate the provisions of Section 3 of this Act shall be deemed to have deprived a handicapped person of his civil liberties. In such case, the handicapped person who has been deprived of his civil liberties shall be entitled to maintain a cause of action for damages in any court of competent jurisdiction, and there shall be a conclusive presumption of damages in the amount of at least One Hundred Dollars (\$100.00) to the handicapped person.

**Dissemination of Information on State Policy Relating  
to the Handicapped**

Sec. 7. (a) In order that there might be maximum public awareness of the policies set forth in this Act, the Governor is authorized each year to issue a proclamation taking suitable public notice of October 15 as White Cane Safety Day. Such proclamation shall contain appropriate comment about the significance of various devices used by handicapped persons to assist them in traveling, and shall call to the attention of the public the provisions of this Act and of other Acts relating to the safety and well-being of this state's handicapped citizens.

(b) State agencies regularly mailing forms or information to significant numbers of public facilities operating within the state are authorized and directed to cooperate with state agencies responsible for the rehabilitation of the handicapped, by sending information about this Act to those to whom regular mailings are sent. Such information, which shall be sent only upon the request of state agencies responsible for the rehabilitation of the handicapped and not more than once each year, may be included either in regular mailings or else sent separately. If sent separately, the cost of mailing shall be borne by the state rehabilitation agency or agencies requesting the mailing and, regardless of whether sent separately or as part of a regular mailing, the cost of preparing information about this Act shall be borne by the state rehabilitation agency or agencies requesting distribution of this information.

**Relationship to Other Laws Relating to the Handicapped**

Sec. 8. The provisions of this Act are in addition to those provisions relating to the use

of white canes by the blind set forth in Senate Bill No. 2, Acts of the 52nd Legislature, Regular Session, 1951, as amended by Senate Bill No. 521, Acts of the 60th Legislature, Regular Session, 1967 (Article 6701e, Vernon's Texas Civil Statutes, as amended). The provisions of this Act shall be construed in a manner compatible with all other state laws relating to the handicapped except for those laws expressly repealed in Section 9 of this Act.

[Acts 1969, 61st Leg., p. 1374, ch. 416, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 809, ch. 364, § 1, eff. Aug. 27, 1973.]

This article includes the subjects treated in former articles 889a, 4596a.

**Art. 4420. May Enter and Inspect**

The members of the State Board of Health or any person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view any ground, public building, factory, slaughter house, packing house, abattoir, dairy, bakery, manufactory, hotel, restaurant and any other public place and public building where they deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules of the sanitary code for Texas and of any health law, sanitary law or quarantine regulation of this State.

[Acts 1925, S.B. 84.]

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

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

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

Sec. 3. If any person shall knowingly turn over any evidence obtained in violation of Section 1 of this Act to the Government of the United States or any agency or instrumentality thereof such person shall be punished by confinement in the county jail for a period not to exceed one (1) year or by a fine not to exceed

Five Hundred Dollars (\$500) or by both such fine and imprisonment.

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

### Art. 4420b. Industrial Homework

#### Definitions

Sec. 1. Whenever used in this Act:

"To manufacture" includes to prepare, alter, repair, or finish in whole or in part for profit and compensation.

"Person" includes a corporation, copartnership, or a joint association.

"Employer" means any person who, directly or indirectly or through an employee, agent, independent contractor, or any other person, delivers to another person any materials or articles to be manufactured in a home and thereafter to be returned to him, not for the personal use of himself or of a member of his family.

"Home" means any room, house, apartment, or other premises, whichever is most extensive, used in whole or in part as a place of dwelling.

"Industrial homework" means any manufacture in a home of materials or articles for an employer.

"Board" means the State Board of Health.

#### Prohibited Homework

Sec. 2. No permit or certificate shall be issued under this Act to authorize the manufacture or the delivery of materials for the manufacture of articles, the manufacture of which by industrial homework is determined by the Board to be injurious to the health or welfare of the industrial homeworkers within the industry, or to the general public, or to render unduly difficult the maintenance of existing health standards or the enforcement of health standards established by law or regulation for factory workers in the industry.

#### Power to Prohibit

Sec. 3. The State Board shall have the power to make an investigation of any industry which employs industrial homeworkers, in order to determine if conditions of employment of industrial homeworkers in such industry are injurious to their health and welfare. If, on the basis of information in its possession, after an investigation, as provided in this Section, the Board shall find that industrial homework cannot be continued within an industry without injuring the health and welfare of the industrial homeworkers within that industry, or the general public, the Board of Health shall by order declare such industrial homework unlawful as provided in Section 2 and require all employers in such industry to discontinue the furnishing within this State of material for industrial homework, and no permit issued under this Act shall be deemed thereafter to authorize the furnishing of materials for industrial homework prohibited by such order.

#### Procedure

Sec. 4. Before making such order the Board shall hold a public hearing or hearings at which an opportunity to be heard shall be afforded to any employer, or representative of employers, and any industrial homeworker or representative of industrial homeworkers, and any other person or persons having an interest in the subject matter of hearing. A public notice of such hearing shall be given at least thirty (30) days before the hearing is held and in such manner as may be determined by the Board. Such hearing or hearings shall be in such place or places as the Board deems most convenient to the employer and industrial homeworkers to be affected by such order. The Board shall determine the effective date of such order, which date shall be not less than ninety (90) days after the date of its promulgation.

#### Employer's Permit

Sec. 5. No materials for manufacture by industrial homework shall be delivered to any person in this State unless the employer so delivering them or his agent, if the employer is not a resident of this State, has obtained a valid employer's permit from the Board. Such permit shall be issued upon payment of a fee of Fifty Dollars (\$50), and shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended. Application for such permit shall be made in such form as the Board may by regulation prescribe. No employer shall deliver or cause to be delivered any materials or articles for manufacture by industrial homework to a person who is not in possession of a valid employer's permit or homeworker's certificate, issued in accordance with this Act. The Board may revoke or suspend any employer's permit if it finds that the employer has violated this Act or has failed to observe or comply with any provision of his permit.

#### Homeworker's Certificate

Sec. 6. No person shall engage in industrial homework within this State unless he has in his possession a valid homeworker's certificate issued to him by the Board. Such certificate shall be issued upon the payment of a fee not to exceed Fifty (50) Cents and after the person applying for such certificate shall present and furnish a health certificate or other evidence showing good health as may be required by the Board and shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended. Application for such certificate shall be made in such form as the Board may by regulation prescribe. Such certificate shall be valid only for work performed by the applicant himself in his own home. No homeworker's certificate shall be issued to any person under the age of fifteen (15) years or to any person suffering from an infectious, contagious, or communicable disease, or living in a home that is not clean, sanitary, and free from infectious, contagious, or communicable

disease. The Board may revoke or suspend any homemaker's certificate if it finds that the industrial homemaker is performing industrial homework contrary to the conditions under which the certificate was issued or in violation of this Act or has permitted any person not holding a valid homemaker's certificate to assist him in performing his industrial homework.

#### Labels Required

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

#### Unlawfully Manufactured Articles

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

#### Records to be Kept :

Sec. 9. No person having an employer's permit shall deliver or cause to be delivered or received any article for, or as a result of, industrial homework unless he shall keep in such form and forward to the Board at such intervals as it may by regulation prescribe, and on such blanks as it may provide, a record of all persons engaged in industrial homework on materials furnished or distributed by him, of all places where such persons work, of all articles which such persons have manufactured, of all agents or contractors to whom he had furnished materials to be manufactured by industrial homework, and of all persons from whom he has received materials to be so manufactured. This information and record shall be for the sole benefit of aiding the Board to enforce the provisions of this Act and shall not be for publication and shall not be divulged except to authorized representatives of the Board in the enforcement of this Act.

#### Enforcement

Sec. 10. The Board shall have the power and it shall be its duty to enforce the provisions of this Act. The Board and authorized representatives of the Board are authorized and directed to make all inspections and investigations necessary for the enforcement of this Act. Rules and regulations necessary to carry out the provisions of this Act shall be made by the Board and violation of any such rule or regulation shall be deemed a violation of this Act.

#### Oaths and Affidavits; Hearings and Subpoenas

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

#### Penalties

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

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

#### Art. 4421. Investigations by Board

The members of said Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances, investigation of public water supplies, of any sanitary conditions, of the existence of infection, or the investigation of any matter requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and if any witness summoned by said board or any of its officers or members shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the

county in which such witness is summoned to appear, as for contempt of said court.

[Acts 1925, S.B. 84.]

#### Art. 4422. No County Physician

The office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of this State and of reputable professional standing.

[Acts 1925, S.B. 84.]

#### Art. 4423. County Health Officer

The commissioners court by a majority vote in each organized county shall biennially appoint a proper person for the office of county health officer for his county, who shall hold office for two years. Said county health officer shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners court; provided, that no compensation or salary shall be allowed except for services actually rendered.

[Acts 1925, S.B. 84.]

#### Art. 4424. No City Physician

The office of city physician is abolished, and instead the office of city health officer is created. The office of city health officer shall be filled by a competent physician, legally qualified to practice medicine within this State, of reputable professional standing.

[Acts 1925, S.B. 84.]

#### Art. 4425. City Health Officer

The governing body of each incorporated city and town within this State shall elect a qualified person for the office of city health officer by a majority of the votes of the governing body, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health, and shall not be deemed to be legally qualified until said copies shall have been so filed.

[Acts 1925, S.B. 84.]

#### Art. 4426. Health Officers Appointed by Board, When

If said authorities shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided then the State Board of Health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill said office, first having given ten days notice

in writing to such authority of the desire for such appointment.

[Acts 1925, S.B. 84.]

#### Art. 4427. Duties of County Health Officer

Each county health officer shall perform such duties as have been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners court and other officers of the county, and shall discharge any additional duties which it may be proper for county authorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas State Board of Health, or the president thereof, and is empowered and authorized to establish, maintain and enforce quarantine within his county. He shall also be required to aid and assist the State Board of Health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his county; and he shall at all times report to said State board, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said State board shall direct; touching on such matters as may be proper for said State board to direct; and he shall aid said State board at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction.

[Acts 1925, S.B. 84.]

#### Art. 4428. Removal of County Officer

In all matters with which the State Board of Health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said State Board of Health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the State Board of Health; and pending charges for removal, said county health officer shall not receive any salary or compensation. Said cause shall be tried in the district court of the county in which such county health officer resides.

[Acts 1925, S.B. 84.]

#### Art. 4429. Charges Against County Health Officer

If any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the State

Board of Health shall file charges with the commissioners court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the State Board of Health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners court shall hear the charges, at which hearing the county judge shall preside, and the State Board of Health may be represented. Either party, the State Board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowances shall be paid to said county health officer for any subsequently earned salary; and, if the charges shall be sustained, the county health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances, earned subsequently to the date of filing the charges and protests.

[Acts 1925, S.B. 84.]

#### Art. 4430. Duties of City Health Officer

Each city health officer shall perform such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, governing body or the ordinances of his city or town. He shall discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the State Board of Health and the president thereof. He shall be required to aid and assist the State Board of Health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the State Board of Health, in such manner and form as said board may prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said State board shall direct, touching all such matters as may be proper for said board to direct, and he shall aid said State board at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said State board shall direct.

[Acts 1925, S.B. 84.]

#### Art. 4431. City Health Officer Removed

In all matters in which the State Board of Health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the State Board of Health. Said cause shall be tried in the district court of the county in which such city health officer resides.

[Acts 1925, S.B. 84.]

#### Art. 4432. Charges Against City Health Officer

If said city health officer fails or refuses to properly discharge his duties of his office, the State Board of Health shall file charges against said city health officer with the governing body of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and governing body of the town or city in which said city health officer shall reside, at which hearing the State Board of Health may be represented, and either the city health officer or the State Board of Health shall have the right of appeal to the county court of the county in which the city or town is situated. If said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and forfeit all salary, fees and allowances accrued subsequent to the date of filing of the charges and protest originally and which may be due him on account of his office.

[Acts 1925, S.B. 84.]

#### Art. 4433. Annual Conference

An annual conference of county and city health officers of this State shall be held at such time and place as the State Board of Health shall designate, at which conference the president or some member of said State board shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference.

[Acts 1925, S.B. 84.]

#### Art. 4434. Co-operation

The municipal authorities of towns and cities, and commissioners courts of the counties

wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as said authorities and courts may deem necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor.

[Acts 1925, S.B. 84.]

#### Art. 4435. In Unincorporated Towns

The commissioners court of any county in which an unincorporated town or village may be situated, shall have power to designate the lines of such town or village, and may appoint a board of health for it, consisting of three persons, two or more of whom shall be regular practicing physicians. Said court when such appointments are made shall at once notify the State Health Officer.<sup>1</sup> Said board shall elect one of their members as presiding officer; and such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, shall notify him of the fact, and that he must proceed at once to clean the same.

[Acts 1925, S.B. 84.]

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

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

The governing body of any incorporated city, town, or village, whether organized under the general laws, the home rule provisions of the Constitution, or by special legislative Act shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or any other places in the city, town, or village which shall be unwholesome or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes stated above, and for making, filling up, altering, or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion, or any other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city, town, or village to keep the same free from weeds, rubbish, brush, and any other objectionable, unsightly, or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten (10) days after notice in writing, or by letter addressed to such owner at his post office address, or by publication as many as two (2) times within ten (10)

consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city, town, or village may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such city, town, or village shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above-mentioned to be done at the expense of the city, town, or village on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the county in which the city, town, or village is situated, a statement by the mayor or city health officer of such city, town or village of such expenses, such city, town, or village shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditure so made and ten per cent (10%) interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements.

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

#### Art. 4436a-1. City-County Health Units in Counties Containing Incorporated City

Cooperation by Commissioners Court and City Council

Sec. 1. In any county containing an incorporated city the Commissioners Court and the city council of such county and city by a suitable order of each of said bodies duly entered on the minutes of the Commissioners Court and city council may co-operate in forming a City-County Health Unit and combine health units of each political subdivision for such purpose and appropriate such funds by each of said governing bodies as may be agreed upon by the two said governing bodies to the combined health unit in such proportion as may be agreed upon between said Commissioners Court and said city council. Where any City-County Health Unit has been heretofore established and the population of the city participating in said health unit has exceeded one hundred and twenty thousand (120,000) according to the 1950 federal census, the joint operation of such health unit between the date of the 1950 census and the effective date of this Act is hereby validated.

City-County Board of Health; Appointment; Qualifications; Term of Office

Sec. 2. Said Health Unit shall be under the direction and supervision of the City-County Board of Health, which shall consist of seven



(7) members, resident citizens of the county, who shall have resided in said county for a period of more than three (3) years next preceding the time of their appointment. All of such members shall be appointed by the joint action of the Commissioners Court and the City Council. Three (3) of the members shall be legally qualified, licensed, and practicing physicians, and shall be approved by the Medical Society of the county; one of the members shall be a qualified, licensed, and practicing dentist, and shall be approved by the Dental Society of the county; all members shall serve without compensation. Of the first members of said Board, four (4) shall serve for a period of one (1) year and three (3) for a period of two (2) years, and thereafter, all appointments shall be for a period of two (2) years, except those appointees who fill the unexpired term of some member. All vacancies caused by the expiration of a term, death, resignation, or removal of members shall be filled by the appointing bodies as above prescribed. No members shall be removed from office except for neglect of duty, incompetence, malfeasance, or conviction of a felony, and then only after notice of the charge made and a full hearing before the appointing bodies with the right of the member removed to appeal to the Courts and have a trial de novo, provided, however, that if any member misses any three (3) consecutive regular meetings without being excused by the Board as a whole, the Board shall declare a vacancy and notify the appointing authority of such fact, so that same may be filled. The Board shall make such rules and regulations for the proper conduct of its duties as it shall find necessary and expedient, and shall possess full supervisory powers over the public health of the county and over the functioning and personnel of the City-County Health Unit, and shall be authorized to make any and all such rules and regulations not in conflict with the ordinances of the city and laws of the State, as they may deem best to promote and preserve the health of the county. All matters of public health involving the expenditure of public funds shall be submitted to the Board for its study and recommendations before final action is taken thereon by the City Council and Commissioners Court.

#### Budget

Sec. 3. Prior to preparation of the budget by the City Council and the Commissioners Court, for the operation of the City-County Health Unit, recommendation shall be obtained from the Board with regard thereto and after the budget has been fixed, the Board shall have the same power of transferring funds from item to item as is possessed by the City Council and Commissioners Court over budgets of city and county.

#### Managing Directors; Appointment and Removal

Sec. 4. A director shall be appointed to actively manage the operation of the Health Unit under the supervision of the City-County Board

of Health. Said director shall be appointed jointly by the Commissioners Court and the City Council, subject to the approval of the City-County Board of Health. The director may be removed at will by the appointing authorities. Likewise, the director may be removed by the City-County Board of Health, provided that such action shall be subject to review by the appointing authorities, and if requested by the director, a hearing will be had before the appointing authorities to pass upon the action of the Board in removing said director, and said appointing authorities may reinstate said director. No County Health Officer and no City Health Officer shall be appointed in any such health unit.

#### Employees; Salaries

Sec. 5. The Commissioners Court and the City Council shall determine the number of employees to constitute the Health Unit and shall fix the salaries of such employees, provided however, that prior to eliminating any or creating any such position in said Unit or to fixing or changing any salary of any employee thereof, the Commissioners Court and City Council shall request recommendation from the City-County Board of Health with regard thereto, although such recommendation shall not be binding on such bodies. Salaries of said employees being once fixed, no increase or decrease shall become effective without approval of the Board of Health, provided further, however, that nothing herein shall prevent the Commissioners Court and City Council, for reason of economy, in eliminating any position or in generally decreasing the salaries. All employees of the Health Unit, other than the director as hereinabove set out, shall be appointed and may be discharged or suspended without pay by the director, subject to the approval of the Board of Health and of the Commissioners Court and City Council.

#### Duration of Existence of Unit

Sec. 6. After the City Council and Commissioners Court have, by resolution, determined to create a City-County Health Unit under the terms of this Act, said Unit shall remain in existence for at least a period of two (2) years, during which time said Commissioners Court and City Council shall be without authority to abolish said Unit, but at the end of every two-year period, said respective bodies shall determine, by resolution, whether said Unit shall be continued as a City-County Health Unit or shall be operated separately as now provided by law.

#### Co-operation With Other Counties

Sec. 7. Any City-County Health Unit created under this Act, having determined by resolution in joint action of the Commissioners Court and City Council that it is to the best interest of the county and city to co-operate with one or more counties having a population of not more than fifteen thousand (15,000) inhabitants in the operation of a Health Unit, may

co-operate with such county or counties under such arrangement as may be entered into between the City Council and the Commissioners Court of said City-County Health Unit and the Commissioners Court of said county or counties. Any county having a population of not more than fifteen thousand (15,000) inhabitants which desire to co-operate with any City-County Health Unit created under the terms of this Act, may, through action of its Commissioners Court, co-operate with said City-County Health Unit as provided in this Section.

[Acts 1939, 46th Leg.Spec.L., p. 844; Acts 1957, 55th Leg., p. 186, ch. 84.]

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

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

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

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

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

Sec. 1. The Commissioners Court of each County of this State having a population of less than twenty-two thousand (22,000), according to the last preceding Federal Census, is hereby authorized to levy a tax, not to exceed five (5) cents on each One Hundred Dollars valuation, upon personal or real property for the purpose of creating a County Health Unit, and for the purpose of buying necessary vaccines, and to pay for necessary medical services required for the immunization of

school children and indigent people from communicable diseases, and to pay as much as one half, or any portion thereof, as they may deem reasonably necessary, for the medical treatment and immunization of indigent people who are not paupers. This Act is not to be construed as mandatory upon said Commissioners Courts, but shall only become effective in any county having a population of less than twenty-two thousand (22,000) after being approved by a majority of the property tax-paying voters of that county at an election called for that purpose by the Commissioners Court after receiving a petition signed by not less than five (5) per cent of the property tax-paying voters of said county requesting such an election.

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

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

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

*Construction or Acquisition of Buildings; Improvements; Location*

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

*Payment for Improvements*

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

Bonds; Taxes; Time Warrants; Certificates  
of Indebtedness

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

Refunding Bonds

Sec. 4. Said Commissioners Court shall have the right at all times to issue refunding bonds for the purpose of refunding bonds and certificates issued under the provisions of this Act, subject to the General Laws applicable to refunding bonds by counties and without the necessity of any notice or right to referendum vote. Said Commissioners Court shall also have the right at all times to issue refunding bonds for the purpose of refunding time warrants issued hereunder, subject to the provisions of the Bond and Warrant Law of 1931, as amended.

Cumulative Effect of Act

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

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

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

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

Art. 4437. Hospitals

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

[Acts 1925, S.B. 84.]

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

Designation of Either County or City Government  
to Take Control

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

Election

Sec. 2. That if in the judgment of the combined boards of County Commissioners and City Councils of such cities, as may be part owners of such hospitals, a countywide election to determine the future ownership and operation of the hospitals is desirable, such county-

wide election may be ordered on the initiative of such combined boards, and a majority vote on the questions submitted shall govern the future ownership and operation of the hospitals, the expense of such election to be paid by the Commissioners' Court from county funds.

#### Tax

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

#### Board of Managers or Directors

Sec. 4. The Board of Managers or Directors of such hospital shall be elected, when so taken over, by the County Commissioners' Court, and said Board shall consist of not less than three members, or more than nine members, and when so elected shall be responsible for and have full and complete control of the management of the conduct of such hospital or hospitals, giving a report of their management at least once every quarter to the Commissioners' Court, and as much oftener as said Court may request, upon any and all acts, rules and regulations performed by them. They shall also give a quarterly financial statement to the Commissioners' Court showing all money expended and received by them and showing fully for what purposes the money has been expended.

#### Free Service

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

#### Terms

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

#### Tuberculosis Control

Sec. 6A. (a) The governing bodies of the county, and of the city or cities within said county adopting the provisions hereof as herein provided, are hereby authorized to conduct a joint program of tuberculosis control within said city or cities and county, having for its object the protection of public health be<sup>1</sup> the alleviation, suppression and prevention of the spread of tuberculosis. Such program may include co-operation with all public or private agencies, federal, state or local, having the same objective, and shall include providing

economic aid in the discretion of the Board hereinafter created, under medical certification as hereinafter provided, to indigents suffering from tuberculosis and to dependent members of their immediate family as part of the total treatment of and as an aid in the prevention of the spread of the disease, for the protection of the public health.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Art. 4437d. Texas Hospital Survey and Construction Act

##### PART A—GENERAL

###### Title

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

###### Definitions

Sec. 2. As used in this Act:

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

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

(c) "Hospital" includes public health centers and general, tuberculosis, mental,

chronic diseases, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

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

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

#### Administration

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

#### General Powers and Duties

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

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

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

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

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

(e) To accept on behalf of the State and to deposit with the State Treasurer any

grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this Act, and to expend the same for such purpose;

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

#### Hospital Advisory Council

Sec. 5. The Governor, within thirty (30) days after this Act takes effect, shall appoint a Hospital Advisory Council, hereinafter referred to as "the Council," consisting of twelve (12) members, who shall advise and consult with the State Board of Health and the State Commissioner of Health in carrying out the administration of this Act. The State Commissioner of Health shall serve as an ex officio member of said Advisory Council. Of the members of the Hospital Advisory Council first appointed, four (4) shall serve for a term of two (2) years, or until their successors shall be appointed and qualified; four (4) shall serve for a term of four (4) years or until their successors shall be appointed and qualified; and the remaining four (4) members shall serve for a term of six (6) years, or until their successors shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Council just appointed, his successor shall be appointed by the Governor for, and he shall serve for, a term of six (6) years, or until his successor shall be appointed and qualified. All members so appointed shall be confirmed by the Senate. On the death, resignation or removal of any member, the Governor shall fill the vacancy by appointment for the unexpired portion of the term. Each member shall serve until his successor is appointed and qualified. The twelve (12) members of the Council to be appointed shall include representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention or treatment of illnesses or disease, or for the provision of rehabilitation services, and at least one representative particularly concerned with education or training of health professionals, and an equal number of representatives of consumers familiar with the need for the services provided by such facilities. Council members while serving on business for the Council shall be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. The Council shall meet as frequently as the State Commissioner of Health deems necessary, but not less than once each year. Upon request by five (5) or more members, it shall be the duty of the State Commissioner of Health to call a meeting of the Council.

PART B—SURVEY, PLANNING  
AND CONSTRUCTION

## Coordination of Federal Act

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

## Hospital Construction Fund

Sec. 8. The State Health Officer<sup>2</sup> is hereby authorized to accept on behalf of the State, and to deposit with the State Treasury any grant, gift or contribution and to receive Federal funds made to assist in meeting the cost of carrying out the purpose of this Act, and to expend the same for such purpose. When such gifts, grants, contributions or moneys from the Federal Government are received, the State Health Officer<sup>2</sup> shall deposit same in the State Treasury in a separate account from all other public moneys to be known as the Hospital Construction Fund, and any disbursements from this fund shall be made by warrants issued by the Comptroller of Public Accounts on claims filed and approved by the State Health Officer.<sup>2</sup> Moneys received from the Federal Government for a construction project approved by the Surgeon General of the United States Public Health Service shall be deposited to the credit of this fund, and shall be used solely for the payments to applicants for works performed and for purchases made in carrying out approved projects.

## PART C—MISCELLANEOUS

## Severability

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

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

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

<sup>2</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.

## Art. 4437e. Hospital Authority Act

## Creation; Title

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

## Definitions

Sec. 2. As used in this law, "City" means any incorporated city or town in this State; "Governing Body" means the council, commission or other governing body of a City;

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

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

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

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

"Trustee" means the trustee under the Trust Indenture.

Ordinance Creating Authority; Status and Powers;  
Joint Action by Two or More Cities

Sec. 3. When the Governing Body of a City shall find that it is to the best interest of the City and its inhabitants to create a Hospital Authority, it shall pass an ordinance creating the Authority and designating the name by which it shall be known. If the Governing Bodies of two (2) or more Cities shall find that it is to the best interest of such Cities to create an Authority to include such Cities, each Governing Body shall pass an ordinance creating the Authority and designating the name by which it shall be known. The Authority shall comprise only the territory included within the boundaries of such City or Cities and shall be a body politic and corporate. It shall have the power of perpetual succession, have a seal, may sue and be sued and may make, amend and repeal its bylaws.

## Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the City or by the Governing Bodies of the Cities, and they shall serve until their successors are appointed as hereinafter provided. If Authority includes more than one City, each Governing Body shall appoint an equal number of Directors unless otherwise agreed by the Cities. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the City or the Governing Bodies of the Cities for two (2) year terms. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Di-

rectors shall be appointed by the Governing Body of the City or each of the Cities, as the case may be, for terms not to exceed two (2) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such City shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

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

Organization of Board; Quorum; Manager or Executive Director; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice-president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. The Board shall employ a manager or executive director of the hospital and such other employees, experts and agents as it may see fit, but it may delegate to the manager the power to employ and discharge employees. The Board may employ legal counsel.

Powers as to Construction, Enlargement, Etc., of Hospital; Location

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

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of the net revenues to be derived from the operation of the hospital or hospitals and any other revenues resulting from the ownership of the hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

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

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum

of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the interest cost to the Authority, including the discount, if any, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registerable as to principal or as to both principal and interest.

Legal and Authorized Investments

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

Bond Resolution; Notice of Intent to Adopt; Publication; Referendum

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

(b) If, prior to the day set for the adoption of the Bond Resolution, there is presented to the secretary or president of the Board of Directors a petition signed by not less than ten per cent (10%) of the qualified voters residing within the boundaries of the City or Cities comprising the Authority, who own taxable property in the Authority and who have duly rendered the same for taxation to the City in which such property is located or situated, requesting an election on the proposition for the issuance of the bonds, the bonds shall not be issued unless an election is held and a majority vote is in favor of the bonds. Such election



shall be called and held in accordance with the procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of 1925, as amended,<sup>1</sup> with the Board of Directors, president and secretary performing the functions therein assigned to the governing body of the City, the mayor and city secretary respectively. If no such petition is filed the bonds may be issued without an election. It is provided, however, that the Board of Directors may call such election on its own motion without the filing of the referendum petition.

#### Junior Lien Bonds; Parity Bonds

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

#### Reserves for Operating Expenses

Sec. 11. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation may be set aside for those purposes out of the proceeds from the sale of the bonds.

#### Refunding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature.<sup>2</sup>

#### Attorney General; Approval of Bonds; Registration; Negotiability

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

#### Nonprofit Institution; Rates Charged; Bond Reserve Fund

Sec. 14. The hospital shall be operated without the intervention of private profit for the use and benefit of the public. But it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the own-

ership, operation and upkeep of the hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the hospital shall be operated.

#### Depositories

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

#### Tax Exemption

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

#### Acquisition of Property; Easements

Sec. 17. For the purpose of carrying out any power conferred by this Act, Authority shall have the right to acquire the fee simple title to land and other property and easements by condemnation in the manner provided by Title 52, Revised Civil Statutes as amended, relating to eminent domain.<sup>3</sup> Authority is hereby declared to be a municipal corporation within the meaning of Article 3268 of said Title 52. The amount of and character or interest in land, other property and easements thus to be acquired shall be determined by the Board of Directors.

#### Investment of Funds; Security

Sec. 18. The law as to the security for and the investment of funds, applicable to Cities, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States Government, to the extent authorized in the Bond Resolution or Indenture or in both.

#### Donations, Gifts and Endowments

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

[Acts 1957, 55th Leg., p. 1379, ch. 472; Acts 1963, 58th Leg., p. 1273, ch. 487, § 1.]

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

<sup>2</sup> Article 717k.

<sup>3</sup> Article 3264 et seq.

### Art. 4437e-1. Leases and Agreements by Hospital Authorities

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

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

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

[Acts 1973, 63rd Leg., p. 1377, ch. 528, eff. June 14, 1973.]

### Art. 4437f. Texas Hospital Licensing Law

#### Title

Sec. 1. This Act may be cited as the "Texas Hospital Licensing Law."

#### Definitions

Sec. 2. For the purpose of this Act:

(a) The term "person" means any individual, firm, partnership, corporation, association or joint stock company, and includes any receiver, trustee, assignee, or other similar representative thereof.

(b) The term "general hospital" means any establishment offering services, facilities, and beds for use beyond twenty-four (24) hours for two (2) or more non-related individuals requiring diagnosis, treatment or care for illness, injury, deformity, abnormality, or pregnancy, and regularly maintaining at least clinical laboratory services, diagnostic X-ray services, treatment facilities which would include surgery and/or obstetrical care, and other definitive medical or surgical treatment of similar extent.

(b)(1) The term "special hospital" means any establishment offering services, facilities and beds for use beyond twenty-four (24) hours for two (2) or more non-

related individuals who are regularly admitted, treated and discharged and require services more intensive than room, board, personal services and general nursing care and which has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities and/or other definitive medical treatment and has a medical staff in regular attendance, and maintains records of the clinical work performed for each patient.

The definition of "hospital" does not include those facilities licensed pursuant to the provisions of Article 4442c, Acts 1953 Legislature, page 1005, Chapter 413.

The definition of "hospital" does not include those institutions licensed pursuant to Articles 5547-88 to Articles 5547-99 of the Mental Health Code.

The definition of "hospital" does not include facilities maintained or operated by the Federal Government or agencies thereof, nor does it include facilities maintained or operated by the State of Texas or agencies thereof. The definition of "hospital" does, however, include those facilities maintained or operated by "governmental" or "governmental unit" as those terms are defined in Section 2, Subsection (d) of this Act.

(c) The term "licensing agency" means the State Board of Health.

(d) The term "governmental" or "governmental unit" means any hospital district, county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(e) The term "medical staff" means that physician or group of physicians, licensed to practice medicine by the Texas State Board of Medical Examiners, who by action of the governing body of a hospital, are privileged to work within and use the facilities of a hospital for or in connection with the observation, care, diagnosis or treatment of individuals who are, or may be, suffering from any disease or disorder, mental or physical, or any physical deformity or injury.

#### Purpose of Act

Sec. 3. The purpose of this Act is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

#### Necessity of License

Sec. 4. After January 1, 1960, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital in this state without a license obtained under the provisions of this law.

**Rules and Regulations; Licensing Director; Appointment; Duties; Qualifications**

Sec. 5. The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt, amend, promulgate, and enforce such rules, regulations, and minimum standards as may be designed to further the purposes of this Act. Provided, however, that the rules, regulations, or minimum standards so adopted, amended, promulgated, or enforced shall be limited to safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Provided, however, that any rules, regulations, or standards set shall first be approved by the State Board of Health, and after they have been so approved, shall be approved also by the Attorney General as to their legality, and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State.

The Commissioner of Health shall appoint, with the advice and consent of the State Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of such Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

**Compliance With Rules and Regulations**

Sec. 6. Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this Act shall be given a reasonable length of time within which to comply with such rules, regulations and standards, but in no event longer than six (6) months. Provided, however, that the Licensing Agency may extend the length of time within which to comply with such rules beyond six (6) months upon sufficient showing that it will require additional time to complete compliance with such rules, regulations, and standards.

**Applications for License; Approval; Fees; Disposition**

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances of building construction,

fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of One Dollar (\$1.00) per bed, provided, however, that a minimum license fee of Twenty-five Dollars (\$25.00) will be required of those hospitals with less than twenty-five (25) beds, and a maximum license fee of Three Hundred Dollars (\$300.00) will be required of those hospitals with more than three hundred (300) beds.

**Issuance of License; Renewals**

Sec. 8. Upon receipt of an application for license, and the license fee, the Licensing Agency shall issue a license if it finds that the applicant and the hospital comply with the provisions of this Act, and the rules, regulations, or standards promulgated hereunder. Each such license, unless sooner suspended, cancelled, or revoked, shall be renewable annually upon payment of the prescribed fee.

**Cancellation, Revocation or Suspension of License; Proceedings; Appeals; Reissuance of License; Injunctions; Venue**

Sec. 9. The Licensing Agency shall have the authority to deny, cancel, revoke, or suspend a license in any case where it finds there has been a substantial failure to comply with the provisions of this Act or the rules, regulations, or standards promulgated under this Act, or for the aiding, abetting, or permitting the commission of any illegal act, or for conduct detrimental to the public health, morals, welfare and safety of the people of the State of Texas.

Proceedings under this Article shall be initiated by filing charges with the Licensing Agency, in writing and under oath. Said charges may be made by any person or persons. If upon investigation of such charge or charges it is found that such charge or charges appear to have merit, then the chairman of the Licensing Agency shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Licensing Agency shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to be, and shall mail a copy of the charges and of

such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear, either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Licensing Agency. The Licensing Agency shall thereupon determine the charges upon their merits.

Any hospital whose license has been cancelled, revoked, or suspended by the Licensing Agency may, within twenty (20) days after the making and entering of such order, take an appeal to any of the District Courts in the county that the hospital is so located in, but the decision of the Licensing Agency shall not be enjoined or stayed except on application to such District Court after notice to the Licensing Agency.

The proceedings on appeal shall be a trial de novo as such term is commonly used and intended in an appeal from the Justice Court to a County Court, and which appeal shall be taken in any District Court of the county where the license has been issued.

Upon application, the Licensing Agency may reissue a license to a hospital whose license has been cancelled, revoked, or suspended when it feels that the reasons bringing about such cancellation, revocation, or suspension have been corrected. Any such applications for reissuance shall be made in such manner and form as the Licensing Agency may require.

The Licensing Agency shall not be bound by strict rules of evidence or procedure in the conduct of its proceedings but the determinations shall be founded on sufficient legal evidence to sustain it.

The Licensing Agency shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said actions for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

The venue for any suit seeking to enjoin the violation of any of the provisions of this Act shall lie in the county wherein such violation is alleged to have occurred.

The Licensing Agency shall be represented by the Attorney General and/or the County or District Attorneys of this state.

Before entering any order denying, cancelling, or suspending a license, the Licensing Agency shall hold a hearing in accordance with the procedures set out in this Section.

#### Transferability of License; Posting

Sec. 10. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

#### Inspection

Sec. 11. Any officer, employee, or agent of the Licensing Agency may enter and inspect any hospital at any reasonable time to assure compliance with, or to prevent a violation of this Act.

#### Stenographers or Inspectors; Assistants; Employment

Sec. 12. The Licensing Agency shall have the power to employ the services of stenographers, inspectors, and other necessary assistants in carrying out the provisions of this Act.

#### Advisory Council; Membership; Terms; Vacancies; Compensation

Sec. 13. The Governor shall appoint a Hospital Licensing Advisory Council consisting of nine (9) members as herein provided:

(a) Three (3) physicians who are duly licensed by the Texas State Board of Medical Examiners and who are engaged in the active practice of medicine; one of whom shall be a member of the staff of a hospital of less than fifty (50) beds;

(b) Three (3) hospital administrators actively engaged in the field of hospital administration for a period of not less than two (2) years; one of whom shall be an administrator of a hospital with less than fifty (50) beds and one of whom shall be an administrator of a hospital with not more than one hundred (100) beds;

(c) Three (3) members representing the general public.

All members shall serve for a term of six (6) years except that the original appointment shall be made so that the terms of three members is for two (2) years, the terms of three members is for four (4) years, and the terms of three members is for six (6) years. Members whose terms expire shall hold office until their successors shall be appointed and qualified. In the event of a vacancy occurring before the expiration of a member's term, the appointment shall be for the unexpired term. Members while serving or acting in their official capacities on the official business of the Hospital Licensing Advisory Council shall receive compensation at the rate of Twenty Dollars (\$20.00) per day and shall also be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their place of residence.

#### Duty of Advisory Council; Special Meetings

Sec. 14. It shall be the duty of the Hospital Licensing Advisory Council to consult and advise with the Licensing Agency in matters of policy affecting the administration of this Act, in the development of rules, regulations, and standards provided for hereunder, and to review, and make recommendations with respect to rules, regulations, and standards authorized hereunder, prior to their promulgation by the Licensing Agency as specified herein.

Special meetings of the Hospital Licensing Advisory Council may be called at the request of the chairman of the State Board of Health or at the request of any three (3) or more members of the Hospital Licensing Advisory Council.

**Disclosure of Information Received by Agency**

Sec. 15. Information received by the Licensing Agency through reports, inspections, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding brought under Section 9 of this Act.

**Violations; Penalties**

Sec. 16. Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not more than One Hundred Dollars (\$100.00) for the first offense and not more than Two Hundred Dollars (\$200.00) for each subsequent offense. Each day shall constitute a separate offense.

**Medical Staff Memberships**

Sec. 17. No provision or provisions of this Act shall in any way change, or modify, the authority or power of the Board of Managers, Board of Trustees, Board of Directors, or Governing Body of any hospital, as that term is defined herein, to make such rules, standards, or qualifications for "Medical Staff" membership, as they in their sole discretion may deem necessary or advisable, or to grant or refuse membership on such "Medical Staff."

[Acts 1959, 56th Leg., p. 505, ch. 223; Acts 1962, 57th Leg., 3rd C.S., p. 92, ch. 32, § 1.]

**Art. 4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population**

**Establishment; Eligibility of Institutions as Members; Name; Purposes; Terms and Conditions**

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Hospital Laundry Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "laundry system" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish the association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

**Definitions**

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) "Eligible institutions" shall include only the component institutions of The University of Texas System and other health related State-supported institutions and nonprofit health related institutions, a unit of which is located within a medical center situated in any county of this State having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health related pursuits to become eligible institutions, and must be exempt from federal income tax.

(2) "Laundry system" shall include buildings in which soiled or infected clothing, uniforms, or linens are laundered; land or estates in land (whether leasehold or other interest) as a site for such buildings and access thereto; equipment and appliances for the laundry operation; supplies for the laundry operation; clothing, uniforms, and linens; automotive and other personal property appropriate for delivery and pick up services; and other property and equipment incidental and appropriate to the operation of laundry facilities.

**Powers, Rights and Functions**

Sec. 3. Associations established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions which are members of the association and to engage in such activities for the benefit of such members as are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) to acquire by purchase, lease, or otherwise lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the laundry system, and to own, hold, improve, develop, and manage any real estate so acquired, and to construct or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate, and to encumber and dispose of any lands or estates in lands and any buildings or other structures at any time owned or held by the association.

(3) to acquire by purchase, lease, manufacture, or otherwise any personal property appropriate or reasonably incidental to the laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing, cloths, and fabrics and the transportation and distribution of these

articles, and to encumber and dispose of any such personal property;

(4) to acquire by purchase or otherwise any uniforms, clothing, or linen for its members;

(5) to borrow or raise money without limit as to amount; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights and other choses in action; to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchased, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association.

#### Use of Public Funds Prohibited

Sec. 4. No public funds appropriated to any department of the State government or to any State institution shall be used in establishing any association authorized by this Act.

#### Authority to Incorporate

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas, which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

#### Cooperative and Nonprofit Requirements; Franchise Tax Exemption; Annual Written Report; Disposition of Surplus Revenue

Sec. 6. Associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless file a written report to the Secretary of State showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from the laundry system to the surplus fund or divide such funds among the members thereof in proportion to their respective contributions to the working capital of the association and patronage of their members.

#### Loans to Members Prohibited

Sec. 7. Associations established under this Act shall not have the power to loan money to their members.

#### Limitation on Powers; Utilization of Loans; Costs of Services as Charge

Sec. 8. Associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of the laundry system may be accomplished in whole or in part with the pro-

ceeds of loans obtained from any public or private source. Such associations are authorized to furnish laundry services from the laundry system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

#### Indebtedness by Borrowing, Bonds, Etc., Authorized; Payment from Revenue Pledged

Sec. 9. Associations established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes from time to time in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the laundry system. Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the laundry system or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of the association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, contrary, no hospital licensed by this state or funds, other than those specifically pledged to the payment thereof.

#### Bonds as Legal Investments and Security for Deposits

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivision of the State of Texas and for all public funds of the State of Texas or its agencies, including the permanent school fund. Such bonds will be eligible to secure the deposit of any and all public funds of the State of Texas, cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto, if any.

#### Membership; Transferability; Bylaws; Voting Rights; Suspension or Expulsion; Disposition of Contractual Obligations and Property

Sec. 11. (a) Membership in associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization of the association by the organizers thereof, or by the Board of Directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the man-

agement of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In the case of expulsion, the association shall pay to the member such amount and at such time as may be fixed in its bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by the association in its bylaws.

(d) All amounts paid or property conveyed or transferred to the association by expelled members not returned as hereinabove provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

**Liability of Members**

Sec. 12. Unless otherwise herein provided, the members of the association established hereunder shall not be responsible to the association or to its creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease.

**Cumulative Effect**

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

**Purposes of Act; Tax Free Status**

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this State, and for the improvement of their properties and industries, the association in carrying out the purposes of this Act will be performing an essential public function under the constitution, and the association shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the association.

[Acts 1971, 62nd Leg., p. 105, ch. 56, §§ 1 to 14, eff. April 12, 1971.]

Section 15 of the act of 1971 provides: "If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth."

**Art. 4437g. Internship or Residency of Foreign Medical School Graduates**

Notwithstanding any provision of law to the notes, or other evidences of obligations out of

operated by the state or a political subdivision, or which receives state financial assistance, directly or indirectly, shall require a Texas resident and who is also a citizen of the United States and who possesses a diploma issued to him by a medical school outside the United States which is listed in the World Directory of Medical Schools published by the World Health Organization to take any examination as a condition to commencing an internship or residency in that hospital other than an examination which is required by the Texas State Board of Medical Examiners to be taken by graduates of medical schools in the United States prior to allowing them to commence internships or residencies. No hospital may require, as a condition to commencing an internship or residency, the completion of any prior period of internship or graduate clinical training or the certification of the Educational Council for Foreign Medical Graduates.

[Acts 1973, 63rd Leg., p. 1766, ch 645, § 1, eff. June 16, 1973.]

**Art. 4438. Indigent Sick**

If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to.

[Acts 1925, S.B. 84.]

**Art. 4439. Isolation of Lepers**

The unexpended sum remaining in the State treasury heretofore appropriated for the purpose of establishing a home for lepers, is hereby appropriated and made available to be expended by and under the direction of the State Health Officer<sup>1</sup> for the isolation and care of persons in this State now known and who may hereafter be found to be afflicted with leprosy.

[Acts 1925, S.B. 84.]

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

**Art. 4440. Repealed by Acts 1959, 56th Leg. p. 379, ch. 181 § 28**

**Art. 4441. Protecting Eyes of New-born**

All doctors, midwives, nurses, or those in attendance at child birth, shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health, to prevent ophthalmia neonatorum in the new-born, and said board shall furnish such solution or other prophylactic drops free of cost to the poor of the State, namely those upon whom it would work a hardship to buy the same.

[Acts 1925, S.B. 84.]

**Art. 4441a. Protecting Eyes of New-born; Penalty**

All physicians, midwives, nurses, or those in attendance at child birth shall use prophylactic

drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health to prevent ophthalmia neonatorum in the new born. Any of the persons referred to in attendance at child birth who shall violate this article shall be fined not less than ten nor more than one hundred dollars for each offense. [1925 P.C.]

**Art. 4442. Repealed by Acts 1959, 56th Leg. p. 505, ch. 223 § 19**

The repealed article, derived from Acts 1921, p. 146, and Acts 1935, 44th Leg., p. 294, ch. 108, related to the licensing of maternity homes.

The subject matter is covered by art. 4437f.

**Art. 4442a. Day Nursery for Care and Custody of Children**

Membership; Term; Vacancies; Oath

Sec. 1. Every person, association or corporation, whether operating for charity or revenue, who shall own, conduct or manage a day nursery, children's boarding home, or child placing agency, or other place for the care or custody of children under fifteen years of age, or who shall solicit funds in this State for any such place or institution, shall obtain an annual license from the State Board of Health, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as said Board shall prescribe. Provided that if said funds are solicited by said associations or corporations through any agent or agents thereof, only one such license shall be required by each said association or corporation for each county of the State of Texas in which county said funds are solicited.

Visitation and Inspection by State Board of Health

Sec. 2. The State Board of Health shall have authority to visit and inspect all such places and institutions embraced within this Act at all reasonable times to ascertain if the same are being conducted in conformity with law or if any conditions exist which need correction.

Record of Children Placed in Custody of Others

Sec. 3. Any person, association or corporation licensed to keep and care for children, as provided in Section 1 of this Act, who shall place out or give to any person the care and custody of any child, shall keep and preserve a record of the full name of such child, the actual or apparent age of such child, the names and residence of its parents so far as known, and name and residence of the person with whom such child is placed; and if the child is removed from the care or custody of the person with whom it was placed the fact of such removal and the disposition of such child shall be entered on the record.

Quarterly Reports to State Board of Health

Sec. 4. Such person, association or corporation shall report to the State Board of Health quarterly and at such times as said Board shall direct, specifying the matters and things required in the record mentioned in the next preceding Section.

Visitation of Children Placed in Custody of Others

Sec. 5. The State Board of Health, or such person as it may authorize, may visit any child so placed, who has not been legally adopted, with a view to ascertaining whether such child is being properly cared for and living in moral surroundings.

Complaints Against Persons Mistreating Child

Sec. 6. Whenever the State Department of Health has reason to believe that any person having the care or custody of a child placed out and not legally adopted, is an improper person for such care or custody, or subjects such child to cruel treatment, or neglect, or immoral surroundings, it shall cause complaint to be filed in the proper Juvenile Court.

Traffic in Placement of Minor Children Prohibited; Restraining Practice

Sec. 6-a. It shall be unlawful for any person, association or corporation operating as a licensed child placing agency, as defined in said Chapter 204 of the Acts of the Regular Session, 41st Legislature, to charge or receive compensation in cash, or in anything of value, for the placement and/or transfer of guardianship of a child under fifteen (15) years of age, and such act or attempted act, shall be deemed as trafficking in the sale and placement of minor children; and such person, association or corporation, may be enjoined in a suit brought by the Attorney General of the State of Texas, or district or county attorney of any county in which said act or acts may have occurred; provided that nothing herein shall be deemed to prohibit, (1), a parent or guardian paying a reasonable amount for the board of a child in a private foster home, or (2), a licensed child placing agency or institution receiving from a parent or guardian a reasonable amount for the current board of a child in a private foster home or institution.

Cumulative Remedy

Sec. 6-b. The remedies and penalties provided in Section 1 hereof shall be cumulative of all other remedies and penalties now provided by Statute in such cases.

Penalty

Sec. 7. Any person, association or corporation who shall attempt to operate without a license as herein provided, or who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than 30 days or by a fine of not less than \$25.00 nor more than \$500.00; and if operating under a license such license may be revoked by the State Board of Health.

[Acts 1929, 41st Leg., p. 444, ch. 204; Acts 1935, 44th Leg. p. 170, ch. 69 §§ 1, 2.]

**Art. 4442b. Repealed by Acts 1953, 53rd Leg. p. 1005, ch. 413 § 16.**

The repealed article, derived from Acts 1945, 49th Leg. p. 577, ch. 342, related to the licensing of convalescent homes. The subject matter is covered by art. 4442c.



### Art. 4442c. Convalescent and Nursing Homes and Related Institutions

#### Purpose

Sec. 1. The purpose of this Act and the Licensing Agency created herein is to promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards; (1) for the treatment of individuals in institutions of the character defined and covered herein; and (2) for the establishment, construction, maintenance and operation of such institutions which in the light of advancing knowledge will promote safe and adequate treatment of individuals in institutions.

#### Definitions

Sec. 2. (a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four (4) or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests. And, provided further, that the provisions of this Act shall not apply to any hospital as that term is defined in the Texas Hospital Licensing Law.<sup>1</sup> The provisions of this Act shall not apply to any nursing home conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with, nor shall this Act apply to establishments that furnish only baths and massages in addition to food, shelter and laundry, nor shall this Act apply to institutions operated by persons licensed by the Texas State Board of Chiropractic Examiners.

"Institution" also means any place or establishment in or at which any person receives, treats or cares for, overnight or longer, within a period of twelve months, four or more pregnant women or women who have within two weeks prior to such treatment or care had a child born to them; provided, however, that this definition shall not include women who receive maternity care in the home of a relative within the third degree of consanguinity or affinity, nor shall it include general or special hospitals licensed in pursuance of or as those terms are defined in the Texas Hospital Licensing Law. Nothing in this Act shall be construed to prohibit an institution, as defined in this subdivision, from simultaneously caring for pregnant women and other women under 50 years of age.

"Institution" also means a foster care type residential facility providing room and board

to fewer than four (4) persons unrelated within the second degree of consanguinity or affinity to the proprietor and who, in addition to room and board, because of his physical or mental limitation or both, requires a level of care and services suitable to the needs of the individual which contribute to his health, comfort, and welfare; provided, however, that such institution shall be subject to licensure only upon written application for participation in the intermediate care program provided by Federal law as it now reads or may hereafter be amended.

(b) "Person" means any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(c) "Government unit" means the state or any county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(d) "Licensing Agency" means the State Department of Public Health.

<sup>1</sup> Article 4437f.

#### Licensure

Sec. 3. After the effective date of this law no person or governmental unit, acting severally or jointly with any other person or governmental unit, shall establish or conduct or maintain an institution, as defined herein, in this State without obtaining a license pursuant to the provisions of this Act.

#### Application for License

Sec. 4. An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder. The application shall be accompanied by a license fee which shall be in the sum of Twenty-five Dollars (\$25) plus One Dollar (\$1) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said Agency for its use in the administration and enforcement of this Act.

Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agen-

cy prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any increase in the bed space above the maximum approved is subject to approval by the Licensing Agency and subject to additional fee. Any violation of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

#### Inspection

Sec. 5. The Licensing Agency or its duly authorized representative shall have the right to enter upon the premises at all reasonable times in order to make whatever inspection it deems necessary in accordance with the rules and regulations prescribed by the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

#### Denial or Revocation of License; Hearings and Review

Sec. 6. The Licensing Agency, after providing notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke the license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. The notice to the licensee shall be effected by registered mail or by personal service, and it shall set forth the particular reasons for the proposed action and fix a date, not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing or upon default of the licensee, the Licensing Agency shall make a written determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served unless the applicant or licensee within such thirty (30) day period appeals the decision to the District Court pursuant to the provisions of this law.

This procedure governing the hearing authorized by this Section shall be in accordance with rules promulgated by the Licensing Agency. A full and complete record shall be kept of all procedures in accordance with rules promulgated by the Licensing Agency. Witnesses may be subpoenaed by either party and their testimony taken in person, or by deposition under such regulations and for such purposes as the Licensing Agency may prescribe in its rules of procedure.

#### Rules, Regulations and Enforcements

Sec. 7. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents;

(c) All sanitary and related conditions within the nursing home and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents.

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the State program with further regulations required to meet local conditions.

#### Compliance by Institutions in Operation

Sec. 8. An institution which is in operation at the time of the promulgation of any rules or regulations or standards in accordance with this Act shall be given a reasonable time in accordance with rules and regulations set up by the Licensing Agency within which to comply with such rules or regulations or standards.

#### Inspections and Consultations

Sec. 9. The Licensing Agency shall make or cause to be made such inspections and investigations as it deems necessary. It is further provided that the Licensing Agency shall wherever possible utilize the services and consultation of other State and local agencies in carrying out its responsibility under the provisions of this Act and shall use wherever possible the facilities of the State Department of Public Welfare especially in setting up and maintaining standards with reference to the humane treatment of the individuals in the institutions.

The Licensing Agency is hereby given the authority to cooperate with local public health officials of any county or incorporated city in carrying out the provisions of this Act and may in its discretion delegate to said local authorities the power to make the inspections and recommendations to the Licensing Agency in accordance with the terms and provisions of this Act.

#### Judicial Review

Sec. 10. Any applicant or licensee aggrieved by the decision of the Licensing Agency, after a hearing, may within thirty (30)

days after the mailing or service of notice of the decision as provided in Section 6, file a notice of appeal in the District Court of the county in which the institution is located or to be located, and serve a copy of the notice of appeal upon the Licensing Agency. Thereupon the Licensing Agency shall promptly certify and file with the Court a copy of the record and decisions including the transcript of the hearings on which the decision is based. The court may affirm, modify, or reverse the decision of the Licensing Agency and either the applicant or licensee or the Licensing Agency or State may apply for such further review as is provided by law. Such trial shall be de novo in the District Court. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved except as the Court otherwise orders in the public interest for the welfare and safeguard of the persons in the institution.

#### Injunction

Sec. 11. Notwithstanding the existence or pursuit of any other remedy, the Licensing Agency may in the manner provided by law upon the advice of the County or District Attorney or upon their failure or refusal to act the Attorney General, who is representing the Licensing Agency in the proceedings, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an institution without a license under this law.

#### Penalties

Sec. 12. Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200) for the first offense and not more than One Hundred Dollars (\$100) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

#### Information Confidential

Sec. 13. Information received by the Licensing Agency through filed reports, inspection, or as otherwise authorized under this law shall not be disclosed publicly, except as authorized elsewhere in this Act, in such manner as to identify individuals or institutions as defined herein except in a proceeding involving the question of licensure.

#### Annual Report of Licensing Agency and Directory

Sec. 14. (a) The Licensing Agency shall prepare annually a full report of the operation and administration of the Act together with such recommendations and suggestions as it deems advisable, and such report shall be submitted to the Governor and the Legislature not later than the first day of October each year.

(b) The Licensing Agency shall prepare and publish annually and keep current a directory

of all licensed institutions coming within the purview of this Act. The directory shall contain the name and address of the institution, the name of the proprietor or sponsoring organization, and such other pertinent data which the Licensing Agency considers to be useful and beneficial to those persons interested in institutions operated in accordance with provisions of this law. Copies of the directory shall be made available to the public.

#### Federal Funds; Personnel

Sec. 15. Provided that in addition to the appropriation of the fees for the purpose of carrying out the provisions of this Act, the Licensing Agency is authorized to accept from the Federal Government any funds that may be allocated by said Government to the Licensing Agency for administrative expenses; and the said Licensing Agency can use such funds so allocated in addition to the fees appropriated for the purpose of carrying out the provisions of this Act.

The Licensing Agency is hereby authorized and empowered to employ such personnel as is necessary for properly administering the provisions of this Act.

[Acts 1953, 53rd Leg., p. 1005, ch. 413; Acts 1959, 56th Leg. p. 505, ch. 223, § 18; Acts 1965, 59th Leg., p. 228, ch. 100, § 1; Acts 1969, 61st Leg., p. 2108, ch. 721, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 51, ch. 34, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 682, ch. 288, § 1, eff. June 11, 1973.]

#### Art. 4442c-1. Construction or Expansion of Nursing or Convalescent Homes; Public Loans; Certificate of Need

Sec. 1. Any person, firm, partnership, corporation, association, or government unit intending to construct or expand a nursing or convalescent home or a similar institution subject to the licensing provisions of Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), may apply to the State Department of Health for a certificate of need in order to qualify for a loan from a public agency to finance the construction or expansion.

Sec. 2. Upon receipt of an application, the department shall make an investigation to determine whether or not there is a need for the construction or expansion of the proposed facility in the area designated by the applicant, and shall certify its findings to the appropriate agency.

[Acts 1971, 62nd Leg., p. 1558, ch. 419, eff. May 26, 1971.]

#### Art. 4442d. Nursing Home Administrators Licensure Act

##### Short Title

Sec. 1. This Act may be cited as the "Texas Nursing Home Administrators Licensure Act."

##### Definitions

Sec. 2. For the purposes of this Act and as used herein:

(1) "board" means the "Texas Board of Licensure for Nursing Home Administrators";

(2) "nursing home administrator" means the person who administers, manages, supervises, or is in general administrative charge of a nursing home, irrespective of whether or not such individual has an ownership interest in such home, and whether or not his functions and duties are shared with one or more other persons;

(3) "nursing home" means any institution or facility now or hereafter licensed as a "nursing home" or "custodial care home" by the Texas State Department of Public Health under the provisions of Article 4442C, Vernon's Texas Civil Statutes or any amendment thereto;

(4) "practice of nursing home administration" means the performance of acts by any person which amounts to the administration, management, supervision, and general administrative charge of a nursing home, whether or not such functions and duties are shared with one or more individuals.

#### Creation and Composition of Board

Sec. 3. (1) There is hereby created the Texas Board of Licensure for Nursing Home Administrators which shall consist of six (6) members. The Commissioner of Public Welfare for the State of Texas, or his designee, and the Commissioner of Health of the Texas State Department of Public Health, or his designee, shall be ex officio members of the board. Such designees shall be chosen from those representatives of the respective departments who are actively assigned to and are engaged in work in the nursing home field. One member shall be a physician duly licensed by the State of Texas, one member shall be an educator connected with a university program in public health or medical or nursing home care administration within the State of Texas, and four (4) members shall be duly licensed nursing home administrators of the State of Texas; however, one of these four shall represent a non-proprietary nursing home.

(2) Appointments to the board shall be made by the Governor after consultation with the associations and societies appropriate to the disciplines and professions representative of the vacancies to be filled.

(3) At least one nursing home administrator member of the board shall be connected with, and representative of, a non-proprietary home and one administrator member may, in addition to being a qualified nursing home administrator, be also a duly licensed professional registered nurse licensed by the Board of Nurse Examiners of the State of Texas.

(4) Appointed members of the board serve staggered terms of six (6) years with the terms of two (2) members expiring on January 31 of each odd-number year. In making the initial appointments, the Governor shall designate two (2) members for terms expiring in 1973, two (2) members for terms expiring in 1975, and two (2) members for terms expiring

in 1977. Vacancies on the board shall be filled by appointment for the unexpired portion of the term.

(5) All appointive members of the board shall hold a degree from an accredited four year college or university and shall have special interest, background, and experience in the field of care for the aged. They shall be residents of the State of Texas and citizens of the United States and shall be of good character.

In lieu of the degree requirement above specified an appointee may nevertheless qualify by submitting to the Governor satisfactory evidence of two (2) years of practical experience as a nursing home administrator for each year, whether one or more, of four (4) years of college and such appointee shall receive credit toward his qualifications for each full year of credits earned by him in an accredited college or university.

(6) Appointive members may be removed by the Governor for just cause after notice and hearing.

(7) No person shall be eligible for appointment as a nursing home administrator representative unless he is the holder of a nursing home administrator's license under the provisions of this Act.

(8) No person shall be eligible for service on this board as a nursing home administrator representative unless he is the holder of a nursing home administrator's license under the provisions of this Act and is currently serving as a nursing home administrator.

(9) All license fees shall be deposited in the state treasury.

#### Organization of the Board

Sec. 4. (1) As soon as practicable after appointment, appointive members of the board shall be certified by the Governor's office and shall take the constitutional oath of office for officers of the State of Texas. The board shall elect from its appointive members a chairman and vice chairman and these officers shall be elected to serve for the calendar year or so much thereof as shall remain, and elections for these offices shall be held annually thereafter for the term of a calendar year. Elections to fill vacancies shall be held in the same manner for the balance of any unexpired term. The board shall also elect a secretary to the board who shall serve at the pleasure of the board and who shall be the executive officer to the board but not a member thereof. The secretary shall have such powers and shall perform such duties as may be prescribed by law or delegated to him by the board under its rules and regulations. Suitable office space, equipment and supplies and additional agents or employees as may be required for discharging the functions of the board shall be provided within the limits of the funds available to the board as hereinafter provided for. The board shall adopt an official seal which shall be affixed to licenses, certificates and other official documents of the board.

(2) The secretary and such other person as the board may designate, as an alternate, shall act as fiscal agent for the board and shall be responsible for the receipt, deposit, safekeeping and disbursement of all funds of the agency, provided, however, that at all times the board shall cause to be maintained in force a fidelity bond covering the secretary and such other person in an amount which shall at all times exceed any reasonable expectations as to the total amount of funds to be held at any one time to the account of the board. At no time shall the fidelity bond or bonds be for an amount less than \$25,000.00.

(3) The board shall hold not less than two meetings per year after due notice thereof and at any meeting a majority of the board shall constitute a quorum. Board members shall receive a per diem of \$25.00 while engaged in board business together with actual and necessary expenses.

#### Exclusive Jurisdiction

Sec. 5. The board shall have exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this Act and the holder of a license under the provisions of this Act shall be deemed to be qualified to serve as the administrator of any nursing home for all purposes.

#### Functions and Duties of the Board

Sec. 6. It shall be the function and duty of the board to:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the ef-

fect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act.

#### Prohibition of Operation or Practice Without a License

Sec. 7. Effective July 1, 1970, no nursing home in the State may operate unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license issued pursuant to this Act. No person shall after such date practice or offer to practice nursing home administration in this State or use any title, sign, card or device to indicate that he is a nursing home administrator, unless such person shall have been duly licensed as a nursing home administrator as required by this Act.

#### Rule Making Authority

Sec. 8. The Board shall have the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in Section 1908 of the Social Security Act,<sup>1</sup> the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered or abolished without the approval of a two-thirds majority of the Board.

<sup>1</sup> 42 U.S.C.A. § 1396g.

#### Qualifications for Licensure

Sec. 9. The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

(1) he is at least 21 years of age, of good moral character, sound in mental and

physical health, and is a citizen of the United States or has duly declared his intention of becoming a citizen of the United States;

(2) he has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the proper needs to be served by nursing homes; laws governing the operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to enable him to administer, supervise and manage a nursing home;

(3) he has passed an examination administered by the board and designed to test for competence in the subject matters referred to in subsection (2) hereof;

(4) that applicant submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school or secondary school approved and recognized by the educational authorities of the State in which such school is located, or a political division thereof, or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being certified by a State educational authority or a political division thereof; and

(5) that applicant has complied with all other qualifications and requirements as may have been established by rule and regulation of the board.

(6) Notwithstanding other requirements and qualifications to the contrary set forth in this Section, the Board may issue a Provisional License to any individual applying therefor who (1) has served as a nursing home administrator during all of the calendar year immediately preceding July 1, 1970, (2) meets the standards of the Board and of this Act relating to good moral character, suitability, age, and citizenship, and (3) has paid the license fee prescribed in Section 10 of this Act. Such Provisional License shall terminate after two (2) years, or at midnight, June 30, 1972, whichever is earlier, and shall be cancelled and be of no legal force or effect thereafter; provided, however, that if, prior to the expiration of such Provisional License, the holder thereof shall have passed a qualifying examination and complied with all other requirements of this Act and the Board, a nursing home administrator's license shall be issued to him. A Provisional License or extension thereof may not be issued to any person after June 30, 1972.

#### Licenses and Fees

Sec. 10. (1) The Board shall license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid for the period issued until surrendered for cancellation or suspended or revoked for violation of this Act or rules and regulations issued pursuant hereto.

(2) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the board. Renewals of licenses shall be granted as a matter of course, unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances, as would constitute grounds for suspension or revocation of a license.

(3) Each person licensed as a nursing home administrator shall pay an initial license fee to be fixed by the board which shall not exceed \$100.00. Each license issued under this Act shall expire on June 30 of even-numbered years and may be renewable. Renewal licenses shall be issued biennially at a fee to be set by the board which shall not exceed \$100.00 for the biennium. Reasonable fees shall be set by the board for the issuance of copies of public records in its office as well as for certificates or transcripts and duplicates of lost instruments. Each applicant for examination and license shall accompany the application with an examination fee of \$70.00, which shall not be refundable, for investigation, processing, and testing purposes. Upon the certification by any department, division, board or agency of the State of Texas of the necessity therefor, all examination fees and license fees provided for herein shall be waived for any employee of such state entity so long as such person remains an employee of the State of Texas and does not serve as a nursing home administrator of a nursing home operated other than by such state entity.

(4) The board may issue a nursing home administrator's license for the regular fee to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State; that the applicant is otherwise qualified; and that the other state gives similar recognition and endorsement to nursing home administrators licenses of the State of Texas.

(5) The board shall have authority to receive and disburse funds received pursuant to Section 1908(e)(1) of the Social Security Act<sup>1</sup> or from any other Federal source of funds or grants for the furtherance of board duties and responsibilities hereunder.

(6) All fees or other monies received by said board under this law shall be deposited to the account of the board in federally insured accounts and shall be paid out on vouchers duly

issued in a manner directed by the board. All monies so received and placed to the account of the board may be used by the board in defraying its expenses in carrying on the provisions of this law. No expenses incurred by said board shall be paid by the State.

<sup>1</sup> 42 U.S.C.A. § 1396g(e)(1).

#### Expiration Dates of Licenses; Proration of Fees

Sec. 10A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on June 30 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

#### Disciplinary Action

Sec. 11. (1) The board shall be authorized to revoke, suspend, or refuse to renew, a nursing home administrator's license after due notice and hearing upon the following grounds or any of them:

(a) upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this Act or the rules adopted in accordance therewith;

(b) upon proof that such licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home of which he is administrator;

(c) upon proof that the licensee was guilty of fraud in securing his license;

(d) upon proof of the intemperate use of alcohol or drugs which in the opinion of the board creates a hazard to patients;

(e) upon proof of a judgment of a court of competent jurisdiction finding the licensee insane; and

(f) upon proof that such licensee has been convicted in a court of competent jurisdiction of a misdemeanor or a felony involving moral turpitude.

(2) The board shall have jurisdiction to hear all disciplinary charges brought under the provisions of this Act against persons licensed as nursing home administrators and upon such hearings shall determine such charges upon their merits. Proceedings under this Act shall be begun by filing with the board written charges under oath. Such charges may be preferred by any person and after notice in writing of not less than fifteen (15) full days, stating the place and date of the hearing, accompanied by a copy of the complaint or charges, the board, or a majority thereof, shall hold a hearing on said charges, cause a written record to be made of the evidence given at the hearing, accord the person charged a right to present evidence, be represented by an attorney, and to cross-examine the witnesses. In this connection the board shall be authorized to issue sub-

poenas for witnesses at the hearing, either at the request of the person cited or on behalf of the board or its representative; to compel the attendance of witnesses, and administer oaths to witnesses. Disobedience of a subpoena duly issued by the board or by its secretary under its direction, shall constitute a contempt of the board which shall be enforceable by any district court sitting in the county in which the hearing is being held upon petition of the board and the presentation to the court of evidence of wilful disobedience and if the district judge is of the opinion and finds that the subpoena was wilfully disobeyed, such judge shall be authorized to punish a subpoenaed witness in like manner and to the extent provided in like cases in civil actions in the district courts of Texas.

(3) Strict rules of evidence shall not apply in a hearing before the board but all decisions of the board shall be supported by sufficient legal and competent evidence.

#### Restoration of Licenses

Sec. 12. The board may, in its discretion, reissue a license to any person whose license has been revoked under such rules and regulations as the board may prescribe.

#### Review

Sec. 13. (1) Any person aggrieved by any action of the board, whether it be a failure to license, or the revocation or suspension of a license, shall have a right to a review of the board's action. First, a person feeling aggrieved by action of the board shall, within ten (10) days following the board's decision or action, file a motion for rehearing with the board which the board shall act on within fifteen (15) days and notify the person affected by such action in writing concerning the decision of the board on the motion for rehearing. If such action of the board is adverse to the person affected, he may, within thirty (30) days after the board's adverse action on his motion, file a written petition in a district court of Travis County, Texas, complaining of the action of the board and seeking to set aside or modify such action. A decision or action of the board shall not be suspended by the filing of a motion for rehearing or by the filing of a petition for review in the district court of Travis County, Texas, but such board action will only be suspended by injunctive order issued by a court of competent jurisdiction. The venue of any action against the board or any of its members concerning official action of the board shall be exclusively in Travis County, Texas.

(2) Any notice required to be given under this section shall be deemed sufficient if sent by registered or certified mail to the person charged at the address shown on his most recent license application or application for renewal of license. When no such address is available the board shall cause to be published once a week for two consecutive weeks a notice of the hearing in a newspaper published in the

county where the person charged was last known to practice nursing home administration, and shall mail a copy of such charges and such notice to such person's last known address. When publication of the notice is necessary, the date of the hearing shall be not less than ten days after the date of the last publication of the notice.

#### Penalties

Sec. 14. On and after July 1, 1970, it shall be unlawful and constitute a misdemeanor for any person to hold himself out as a nursing home administrator or to act or serve in the capacity of a nursing home administrator unless he is the holder of a license as a nursing home administrator issued in accordance with the provisions of this Act and any person who violates this section or any other provision of this Act, shall, upon conviction be punished by imprisonment in the County Jail for not less than one day nor more than thirty days, or by fine of not less than \$100.00 nor more than \$1,000.00, or by both such imprisonment and fine.

#### Assistance by Attorney General

Sec. 15. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this requirement shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Annual Report

Sec. 16. An annual report shall be made by the board to the Governor on or before March 15th of each year which shall set forth in summary the activities of the board for the preceding calendar year and its fiscal condition.

[Acts 1969, 61st Leg., p. 1356, ch. 411, eff. June 2, 1969; Acts 1971, 62nd Leg., p. 2425, ch. 773, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3369, ch. 1031, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 143, ch. 74, § 1, eff. May 7, 1973; Acts 1973, 63rd Leg., p. 627, ch. 266, § 16, eff. June 11, 1973.]

#### Art. 4443. Omitted

The article, derived from Acts 1923, p. 68, contained provisions identical with Acts 1927, 40th Leg., p. 260, ch. 182, §§ 1, 2, incorporated in art. 4443a, and is, therefore, omitted.

#### Art. 4443a. Federal Aid Accepted

Sec. 1. That the State of Texas hereby accepts the provisions of the Act of Congress<sup>1</sup> mentioned in the caption hereof and the State Board of Health is hereby authorized and directed through its bureau of Child Hygiene to co-operate with the Federal Children's Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent, or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this Act, shall, by virtue of this Act, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them or of the person

standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents or either of them or the person standing in loco parentis, or having the custody of such child. Nothing in this Act shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose.

All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential, and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public welfare shall demand that it be disclosed, or used in furtherance of public welfare.

Sec. 2. The Treasurer of the State of Texas is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board.

[Acts 1927, 40th Leg., p. 260, ch. 182.]

<sup>1</sup> Act Nov. 23, 1921, c. 135, §§ 1 to 14, 42 Stat. 224 to 226, as amended, repealed as of June 30, 1929, by Act Jan. 22, 1927, c. 53, § 2, 44 Stat. 1024.

#### Art. 4444. Repealed by Acts 1961, 57th Leg., 1st C.S., p. 156, ch. 42, § 14

#### Art. 4445. Venereal Diseases

Syphilis, gonorrhoea and chancroid, herein-after designated venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health:

#### Reporting of Cases

Sec. 1. Any physician or other person who makes a diagnosis in, or treats, a case of syphilis, gonorrhoea or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately, in writing, to the local health officer, stating the name, address, age, sex, race, and occupation of the diseased person. The report shall be enclosed in a sealed envelope and sent to the local health officer who shall report weekly on the prescribed form to the State Board of Health, all cases reported to him. The physicians and others residing in cities having no city health officer, shall make reports required in this section direct to the State Board of Health.

#### Instructions in Preventing Spread and Necessity for Treatment

Sec. 2. It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhoea or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until cured.



Examination and Detention of Persons Convicted of Prostitution or Vagrancy

Sec. 3. Upon final conviction for the offense of prostitution or vagrancy all duly authorized health officers of this State are hereby authorized to make clinical examination of such convicted persons to determine if such person is infected with Venereal Disease; if such examination discloses that such person examined is so infected, then said health officer may detain such infected person in a Venereal Disease Clinic or other suitable place until such person is free from infection.

Measures for Protection; Notice to Infected or Suspected Persons; Detention

Sec. 4. Upon receipt of a report of a case of venereal disease, the local health officer shall institute measures for protection of other persons from infection by such venereally diseased person:

All duly authorized health officers of this State are authorized to notify any person who is known to be infected with a Venereal Disease, or who is reasonably suspected of same, to place himself under the medical care of a reputable licensed physician, hospital or clinic for treatment or examination until such physician, hospital or clinic shall furnish such health officer with a certificate that such person examined or treated is free from such Venereal Disease infection. The certificate shall state that the person examined has been given an actual and thorough examination, including a standard serologic test for syphilis and gonorrhoea, provided that the test for gonorrhoea shall be that type of test as approved by the State Department of Health. Such certificate shall also contain the report of the test.

Any person so directed as herein provided who fails to follow such directions after being notified by such health officer, may be detained by such health officer in a Venereal Disease Clinic, or any other suitable place for examination and if found to be infected with Venereal Disease, then such infected person may be detained for treatment of such infection.

Notice to Local Health Officer of Diseased Person

Sec. 5. If an attending physician or other person knows or has good reasons to suspect that a person having syphilis, gonorrhoea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local health officer of the name and address of the diseased person and the essential facts in the case.

Cooperation

Sec. 6. All local and State health officers are directed to co-operate with proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

Certificates of Freedom from Venereal Disease

Sec. 7. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this section shall not prevent the issuance of statements of freedom from infectious diseases written in such form, or given under such safeguards, that their use for solicitation for sexual intercourse would be impossible.

Information and Reports Inaccessible to Public

Sec. 8. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by the laws of the State.

Failure of Health Officer or Physician to Perform Duties; Forfeiture of License; Suits

Sec. 9. Any health officer or other physician who shall wilfully fail to perform the duties required of him in this article shall, in addition to the fines imposed by law, forfeit his right and license to practice medicine within this State; and the district courts of the State shall have jurisdiction of suits for the forfeiture of such license in such cases, and the suit may be filed by any citizen of the State in a court having jurisdiction, under the ordinary rules of venue, and it shall be the duty of the county and district attorneys to represent the petitioners in such suit.

Penalty

Sec. 10. Whoever violates any provision of this article shall be fined not less than five nor more than fifty dollars:

1. No person infected with a venereal disease shall knowingly expose another to infection with any venereal disease, or perform an act which exposes another person to infection with such disease.

2. No local health officer, employé, inspector, physician, nurse, or superintendent of a clinic or hospital shall fail to perform any duty required of him by the laws of this State relating to venereal diseases and requiring reports in such cases.

3. Whoever sells any drug or preparation of any kind used for or believed by the seller to be intended to be used for the treatment of syphilis, gonorrhoea, or chancroid shall keep a record of the name and address of such purchaser and mail a copy of such record each week to the local health officer.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 1066, ch. 550, §§ 1, 2; Acts 1973, 63rd Leg., p. 742, ch. 322, § 1, eff. June 12, 1973.]

Section 2 of the 1973 amendatory act provided: "All laws or parts of laws which are in conflict with this Act are hereby repealed or modified to the extent of such conflict only."

Art. 4445a. Prenatal Examination for Syphilis

Duties of Attending Physician

Sec. 1. Every physician or other person permitted by law to attend a pregnant woman during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of the blood of such women at the time

of the first examination and visit, and submit such sample to an approved laboratory for a standard serologic test for syphilis. Reports of each such case shall be retained by the physician or person so in attendance for a period of nine (9) months, and such reports shall be delivered to any successor in any such case, who shall thereupon be presumed to have complied with the provisions of this Section.

#### Standard Serologic Tests Defined; Execution

Sec. 2. For the purpose of this Act, "standard serologic test" shall mean all such tests or procedures as may be approved by the State Board of Health. Such tests shall be executed for any physician without charge by the State, county, and city laboratories. All such laboratories shall meet standard of proficiency and the approval of the State Board of Health. Private laboratories complying with the provisions herewith may also execute the tests called for by this Act. The State Health Officer<sup>1</sup> shall immediately forward to all County Clerks the names of approved laboratories and, thereafter, those added, withdrawn, or reinstated.

#### Statement on Report of Birth

Sec. 3. Every physician or other person required to report births or still-births shall state on each certificate used whether a blood test for syphilis was made during such pregnancy.

#### Exemption of Persons Relying on Spiritual Means

Sec. 4. None of the provisions of this Act shall apply to any person who, as an exercise of religious freedom, administers to or treats the sick or suffering by spiritual means or prayer, nor to any person, who, because of her religious belief in good faith selects and depends upon such spiritual means or prayer for the treatment or cure of disease.

#### Existing Laws and Regulations

Sec. 5. Nothing in this Act shall impair or affect the existing laws or rules or regulations made by authority of law, relative to the reporting of cases of venereal diseases discovered by physicians in the course of their practice.

#### Saving Clause

Sec. 6. That in the event any Section, or part of Section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Section, or parts of Sections of this Act.

#### Penalty

Sec. 7. Any physician or other person legally permitted to engage in attendance upon a pregnant woman during the period of pregnancy or at delivery who shall violate any provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than Two Hundred Dollars (\$200) or more than Five Hundred Dollars (\$500).

[Acts 1949, 51st Leg., p. 1062, ch. 548.]

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

4 West's Tex.Stats. & Codes—27

#### Art. 4445b. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

The repealed article granted minors the capacity to consent to examination and treatment of venereal diseases and was derived from Acts 1969, 61st Leg., p. 1629, ch. 506.

See, now, Family Code, § 35.03.

#### Art. 4445c. Laboratory Tests for Venereal Diseases; Reporting Results

##### Notification of Findings; Duty

Sec. 1. (a) Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those venereal diseases significant from a public health standpoint listed in Section 3 of this Act shall notify the Communicable Disease Services Section, Texas State Department of Health, of such findings.

(b) Notification shall be submitted by the person in charge of the clinical laboratory to the Communicable Disease Services Section, Texas State Department of Health, through the local health officer having jurisdiction of the area containing the office address of the physician for whom the examination or test was performed. In the absence of a local full-time health officer, said report(s) will be forwarded directly to the Communicable Disease Services Section, Texas State Department of Health.

##### Notification of Findings; Contents

Sec. 2. (a) Notification shall contain the date and result of the test performed, the name and age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. Also, notification shall be submitted in writing and in such form and manner as prescribed by the Communicable Disease Services Section, Texas Department of Public Health.

(b) Cumulative reports shall be submitted weekly except that positive darkfields (syphilis) shall be reported within 24 hours.

(c) If no reportable tests are performed during any month, the supervisor of the laboratory shall submit a statement to this effect before the fifth usual working day of the following month.

##### Particular Diseases

Sec. 3. (a) The conditions or diseases to which this Act applies are:

- (1) Syphilis
- (2) Gonorrhea
- (3) Chancroid
- (4) Lymphogranuloma Venereum
- (5) Granuloma Inguinale

(b) Specific reportable venereal disease tests are:

- (1) All reactive (positive) and weakly reactive (doubtful) serologic tests for syphilis;

(2) All reactive (positive) and weakly reactive (doubtful) spinal fluid serologic tests for syphilis;

(3) All positive darkfield microscopic tests for *treponema pallideum*;

(4) All positive gonococcal smears or cultures;

(5) All positive tests indicating the presence of the Ducrey bacillus (chan-croid) or Donovan bodies (Granuloma In-guinale) or filterable virus (Lymphogranu-losa Venereum).

#### Confidential Information

Sec. 4. All laboratory notifications re-quired by this Act are confidential and shall not be open for inspection by anyone except authorized public health personnel.

#### Contacts with Patient and Physician

Sec. 5. (a) Except when acting on the basis of information other than the laboratory noti-fication, neither the Communicable Disease Services Section, Texas State Department of Health, nor the local health director will under any circumstances contact the patient or the potential contacts until a diagnosis has been reported to the Department of Health by the attending physician.

(b) Nothing in this Act precludes the De-partment of Health from discussing the labora-tory notification with the attending physician.

#### Repealer

Sec. 6. All laws and clauses of laws in con-flict with this Act are hereby repealed.

#### Inspections

Sec. 7. The Communicable Disease Services Section, Texas State Department of Health, will take such inspection measures as are nec-essary to insure that the clinical laboratories of the state comply with this Act.

[Acts 1969, 61st Leg., p. 1674, ch. 537, eff. June 10, 1969.]

#### Art. 4446. Legal Proceedings

In all matters wherein the State Board of Health shall invoke the aid of the courts, the action shall run in the name of the State of Texas. The Attorney General shall assign a special assistant to attend to all legal matters of the board. Upon demand of the board, the Attorney General shall furnish the necessary assistance to the board to attend to all its legal requirements. No bond for costs, or bond on appeal or writ of error, shall be required of the State Board of Health or State officials in any action brought or maintained under this chap-ter.

[Acts 1925, S.B. 84.]

#### Art. 4447. Charbon Districts

All of that portion of this State in which charbon or anthrax has been prevalent or any district of this State in which charbon or an-thrax may become prevalent, shall be known as charbon districts and shall be subject to the following provisions:

1. Bacteriologist.—The State Board of Health shall employ a bacteriologist at a

salary of not more than \$300.00 per month and during the time that charbon or an-thrax is prevalent he shall make an exami-nation and analysis and a scientific re-search for the purpose of combating with said disease and he may be kept in the dis-trict affected by charbon as many months each year as said board deems necessary.

2. Visits and isolation.—The State Board of Health acting through one of the members or through the local health office in the county where charbon is reported to be prevalent shall in person or through some one employed by them, visit all stock reported to have charbon or anthrax and see that proper steps be taken for the iso-lation of same from other stock, and also isolate other stock which have been ex-posed to said disease and so keep same iso-lated for such period as it may deem nec-essary.

3. Proclamation.—The proclamation of the county health officer shall be suffi-cient if it name the kinds or classes of stock to which it shall apply. It shall be published in some newspaper published in the county, if there be one; and if none, it shall be posted in three public places in said county, one of which shall be at the courthouse door of such county if the proclamation pertains to the whole county, then in any three public places in such subdivision. One insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such no-tice is given.

4. Elections.—In all counties now or which may become affected with charbon or anthrax, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdi-vided thereof; upon the petition of ten per cent of the qualified voters of such county or subdivision thereof presented to the commissioners court of such county in open session, requesting such court to or-der an election to be held in such county or political subdivision thereof, said peti-tion to state the territory within which an election is requested, the kinds of animals to be affected, and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, said court shall order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as des-ignated in the order for such election; and the court shall also designate in said order of election the time within which such stock is to be prohibited from run-ning at large, whether for the entire year or for portions thereof; which the said

court is hereby authorized to do in accordance with the petition therefor. It is made the duty of said court to provide for the holding of such elections and compensation of officers thereof. The expense of such election shall be borne by the county wherein such election is ordered and held. In any such election so to be held the ballots shall read as follows:

"For the Running at Large of Domestic Animals," and

"Against the Running at Large of Domestic Animals."

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, who shall forthwith call the commissioners court together for the purpose of canvassing the returns; and if it shall be found by the commissioners court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in favor of prohibiting the running at large of such domestic animals as herein named, then said court shall forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held.

[Acts 1925, S.B. 84.]

#### Art. 4447a. Coordinated Health Program

##### Cooperation in Establishment of Program

Sec. 1. The Commissioners Court of any one or more counties and the municipal authorities of any one or more cities, towns, school boards and school districts, and any other governmental entity may cooperate in the establishment of a Health District and by mutual agreement may provide for the payment of costs, including the salaries of persons employed, materials used, and the provision of suitable office quarters, health and clinic centers, health services and facilities therefor, and for all maintenance purposes.

##### Purpose of Act; Health Districts; Definitions

Sec. 2. The purpose of this Act is to promote the effectiveness of local public health programs by providing for the establishment of health districts for administering a coordinated health program for the counties and cities which are members of a district. As used in this Act, "city" means any incorporated city, town or village in this state, and "member" means a county or city which is a party to an agreement for formation of a health district.

##### Copies of Agreements Creating Districts; Filing; Forwarding

Sec. 3. A copy of the agreement creating the health district shall be included in the minutes of the governing body of each member

and shall be filed in the office of the county clerk or city secretary or clerk of each member. A copy shall also be forwarded to the State Commissioner of Health.

##### Functions of Districts

Sec. 4. A health district may perform all the functions pertaining to public health which any of its component members is authorized to perform.

Health Board; Members; Appointment; Qualifications; Terms; Vacancies; Removal; Rules and Regulations; Powers

Sec. 4a. (a) The Health District may be under the direction and supervision of a Health Board which shall consist of either seven or nine members, resident citizens of the county, who shall have resided in the county for a period of more than 3 years preceding the time of their appointment. All of such members shall be appointed by the joint action of the Commissioners Court, the municipal authorities and any other participating governmental entities.

(b) Three of the members shall be legally qualified, licensed, and practicing physicians, and shall be approved by the Medical Society of the county; one of the members shall be a qualified, licensed, and practicing dentist, and shall be approved by the Dental Society of the county; all members shall serve without compensation.

(c) Of the first members of said Board, four shall serve for a period of one year and the balance for a period of two years, and thereafter, all appointments shall be for a period of two years, except those appointees who fill the unexpired term of some member.

(d) All vacancies caused by the expiration of a term, death, resignation, or removal of members shall be filled by the appointing bodies as above prescribed.

(e) No member shall be removed from office except for neglect of duty, incompetence, malfeasance, or conviction of a felony, and then only after notice of the charge made and a full hearing before the appointing bodies with the right of the member removed to appeal to the courts and have a trial de novo, provided, however, that if any member misses any three consecutive regular meetings without being excused by the Board as a whole, the Board shall declare a vacancy and notify the appointing authority of such fact, so that same may be filled.

(f) The Board shall make such rules and regulations for the proper conduct of its duties as it shall find necessary and expedient, and shall possess full supervisory powers over the public health of the county and over the functioning and personnel of the City-County Health Unit, and shall be authorized to make any and all such rules and regulations not in conflict with the ordinances of the city and laws of the State, as they may deem best to promote and preserve the health of the county.

(g) All matters of public health involving the expenditure of public funds shall be submitted to the Board for its study and recommendations before final action is taken thereon by the City Council and Commissioners Court.

Director; Appointment; Qualifications; Removal; Oath; Compensation; Exemption of Districts

Sec. 5. (a) A Director shall be appointed for each Health District. Said Health Board shall be authorized to appoint the Director to actively manage the operation of the district. Said Health Board, may at any time for good cause, remove said Director. The Director shall be a physician licensed or eligible to be licensed to practice medicine in the State of Texas and shall possess such other qualifications as may be specified in the agreement. He need not be a resident of the district at the time of his appointment, but he shall maintain his residence within the district during his tenure of office.

(b) The Director shall take and subscribe to the official oath, and shall file a copy of such oath and copy of his appointment with the State Board of Health; and until such copies are so filed, he shall not be deemed legally qualified. He shall be compensated in accordance with the terms of the agreement under which the district is formed.

(c) Any existing Health Districts organized under the provisions of this Act may be exempt from the provisions of Sections 4a and 5a<sup>1</sup> of this Act by notifying the Commissioner of Health in writing of their intent to exercise this exemption provision.

<sup>1</sup> See section 4a and subsec. (a) of this section.

Transfer of Authority; Discontinuance of Office of City or County Health Officer

Sec. 6. Upon appointment and qualification of a director for the district, the authority vested in the county health officer or the city health officer for one or all members of the district may thereafter be transferred to the director, and the office of county health officer or city health officer may be discontinued by one or all members of the district for the duration of the agreement, provided the County Commissioners Court of each county and the city council of each city involved, who are members of the district consent.

Appointment and Payment of Physicians

Sec. 7. The director, with the approval of the governing body of the district, may appoint full-time or part-time physicians or arrange for payment of physicians on a fee-for-service basis for rendering medical care for prisoners in city or county jails, rendering medical care to indigents, rendering testimony at lunacy hearings, and for the carrying out of responsibilities concerning medical matters covered by municipal ordinances or court orders in the counties that are members of the district.

Funds for Medical Services

Sec. 8. The district will provide funds for the required medical services as specified in

the agreement under which the district operates.

Public Health Physicians

Sec. 9. City and county health officers who are serving at the time a district is organized may be designated as public health physicians, and may continue to render health services which are not in conflict with that of the director of the district.

Enforcement of Public Health Laws

Sec. 10. The director of a district shall be responsible to the governing body of the jurisdiction for the enforcement of public health laws and ordinances for the protection of the health of the people, and for the carrying out of such duties in control of diseases as may be prescribed for him in the local agreement.

Modification of Agreement; Dissolution of District; Withdrawal of City or County; Appointment of Health Officer

Sec. 11. The agreement under which a district is created may be modified from time to time with the consent of all the governing bodies which are parties thereto, and additional counties or cities may be included in the district with the consent of all the parties. A district may be dissolved by consent of all the governing bodies, and any county or city may withdraw from a district upon request of its governing body with the consent of a majority of the remaining governing bodies or by the governing body giving one years notice to each of the other governing bodies of its intention to withdraw. Upon dissolution or withdrawal, the funds and property of the district shall be distributed or adjusted in such manner as the agreement provides, or in the absence of a provision in the agreement, in such manner as a majority of the governing bodies agree upon. When any county or city ceases to be a member of a district, a health officer for the county or city shall be appointed immediately and he shall resume the performance of the duties vested in that officer.

[Acts 1949, 51st Leg., p. 107, ch. 63, § 1; Acts 1959, 56th Leg., p. 536, ch. 239; Acts 1971, 62nd Leg., pp. 1800, 1801, ch. 533, §§ 1 to 3, eff. June 1, 1971.]

Art. 4447b. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this Article, enacts Titles 1 and 2 of the Texas Education Code.

Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services

Creation; Membership; Terms

Sec. 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Commissioner of Health, the Commissioner of Education, the Executive Director of the Board for Texas State Hospitals and Special Schools, the Chairman of the Texas Employment Commission, the

Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, and the Executive Director of the Texas Youth Council;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized interest in welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1960, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

#### Organization; Chairman

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members and organize by selecting a chairman and vice-chairman. The chairman shall be a member of the Legislature, and after the initial selection, the chairmanship shall alternate biennially between House and Senate members.

#### Secretariat; Records

Sec. 3. The staff of the Texas Legislative Council shall serve as secretariat to the Texas Coordinating Commission for State Health and Welfare Services, keeping the records of the Commission and performing such other duties as may be requested by the Commission.

#### Meetings

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the members shall constitute a quorum.

#### Compensation; Expenses

Sec. 5. Members of the Commission shall serve without compensation, but members of the Commission who are members of the Legislature shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from Texas Legislative Council funds.

#### Duties

Sec. 6. It shall be the duty of the Texas Coordinating Commission for State Health and Welfare Services:

(1) To make a continuing study and analysis of the state's health and welfare services generally and specifically, both as to cost and adequacy;

(2) To study diagnostic services, care, training, educational and rehabilitation programs for the handicapped;

(3) To recommend long-range programs to be carried out by the several state departments, institutions, and agencies having health and welfare functions;

(4) To inspect and make recommendations specifically concerning state institutions and facilities for the mentally and physically handicapped;

(5) To recommend the elimination of duplication of services between agencies or recommend the institution of additional services;

(6) To study and determine the need for changes in the laws as they apply to the care, education, training and rehabilitation of the handicapped;

(7) To determine the need for changes in administrative procedure and to recommend such changes to the agencies and departments concerned;

(8) To examine from year to year, the adequacy, coverage, and administration of old age assistance and assistance programs for the blind, the permanently and totally disabled, and dependent children; and

(9) To make recommendations to the Legislature concerning the matters covered in items (1) through (8) for its consideration.

#### Cooperation of Departments, Agencies and Institutions

Sec. 7. All state departments, agencies, and institutions functioning in the fields of health and welfare in any way, shall cooperate with and assist the Texas Coordinating Commission for State Health and Welfare Services in the performance of its duties and shall make available all books, records, and information requested except that which is declared by law to be confidential in nature.

#### Reports

Sec. 8. The Commission shall compile biennial reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year preceding the year in which the Legislature convenes in Regular Session and shall include any recommendations which the Commission may have for legislative action.

[Acts 1959, 56th Leg., p. 773, ch. 352.]

#### Art. 4447d. Providing State Department of Health with Data on Condition and Treatment of Persons

Sec. 1. Any person, hospital, sanatorium, nursing or rest home, medical society, cancer registry, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the State Department of Health, persons or organizations making inquiries pursuant to immunization surveys conducted under the auspices of the State

Department of Health, medical organizations, hospitals and hospital committees, to be used in the course of any study for the purpose of reducing morbidity or mortality, or for the purpose of identifying persons who may be in need of immunization, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

Sec. 2. The State Department of Health, medical organizations, hospitals and hospital committees shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. The identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances except in the case of immunization surveys conducted under the auspices of the State Department of Health for the purpose of identifying persons who may be in need of immunization. With the exception of immunization information, all information, interviews, reports, statements, memoranda, or other data furnished by reason of this Act and any findings or conclusions resulting from such studies are declared to be privileged.

Sec. 3. The records and proceedings of any hospital committee, medical organization committee or extended care facility committee established under state or federal law or regulations or under the by-laws, rules or regulations of such organization or institution shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee and shall not be public records and shall not be available for court subpoena; provided, however, that nothing herein shall apply to records made or maintained in the regular course of business by a hospital or extended care facility. No physician, hospital, organization, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution shall, by reason of furnishing such information, be liable in damages to any person. No member of such a committee shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

[Acts 1963, 58th Leg., p. 943, ch. 372; Acts 1969, 61st Leg., p. 1719, ch. 568, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1442, ch. 399, §§ 1, 2, eff. May 26, 1971.]

#### Art. 4447d-1. Inadmissibility as Evidence of Immunization Survey data

Data obtained from a physician's medical records by any person conducting immunization surveys under the auspices of the State Department of Health shall not be admissible as evidence in a suit against the physician involving an injury relating to the immunization of an individual.

[Acts 1971, 62nd Leg., p. 1443, ch. 400, § 1, eff. May 26, 1971.]

#### Art. 4447e. Phenylketonuria

Sec. 1. The State Department of Health shall establish, maintain, and carry out a program designed to combat mental retardation in children suffering from a genetic defect which causes phenylketonuria. The State Department of Health is authorized to adopt regulations necessary to carry out the program. The Department shall establish and maintain a diagnostic laboratory for conducting experiments, projects, and other undertakings necessary to develop tests for the early detection of phenylketonuria; for developing ways and means or discovering methods to be used for the prevention and treatment of phenylketonuria in children; and for such other purposes considered necessary by the Department to carry out the program.

Sec. 2. The physician attending a newborn child, or the person attending a newborn child that was not attended by a physician, shall cause the child to be subjected to the phenylketonuria test that has been approved by the State Department of Health. Providing, however, that such test shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provisions of this Act are mandatory with the exception above-stated; however, no physician, technician, or person giving such test shall be liable or responsible because of the failure or refusal of the parent or guardian to give permission or consent to tests herein provided. The county health officer shall follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician. When a positive test is confirmed, the services and facilities of the State Department of Health, and those of other boards, departments, agencies, and political subdivisions of the State cooperating with the Department in carrying out the program, shall be made available to the extent needed by the family and physician. The State Department of Health and the other departments, boards, agencies, and political subdivisions of the State cooperating with it shall, in cooperation with an attending physician, provide for the continued medical care, dietary, and other related needs of such children where necessary or desirable.

Sec. 3. The various boards, departments, agencies and political subdivisions of the State capable of assisting the State Department of

Health in carrying out any program established under the authority of this Act may cooperate with the department and are encouraged to furnish their services and facilities in aid of any such program.

Sec. 4. The State Department of Health may invite the cooperation of all physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established by the Department under the authority of this Act.

[Acts 1965, 59th Leg., p. 506, ch. 262.]

**Art. 4447f. Duty of State Department of Health to Recommend Policies Relating to Medical Aspects of Driver Licensing, Traffic Safety and Accident Investigation**

Sec. 1. The State Department of Health shall continuously study and investigate the medical aspects of

- (1) driver licensing;
- (2) enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and
- (3) accident investigation, including examination for alcohol and drugs in the bodies of persons killed in traffic accidents.

Sec. 2. As a result of its studies and investigations, the Department of Health periodically shall recommend policies, standards, and procedures to the Department of Public Safety relating to the medical aspects of driver licensing, enforcement of traffic safety laws, and accident investigation.

[Acts 1967, 60th Leg., p. 789, ch. 330, eff. Aug. 28, 1967.]

**Art. 4447g. Psychological and Audiological Tests for Deaf or Hard-of-Hearing Persons**

Sec. 1. The State Department of Health shall establish and develop a state program for the testing of deaf and hard-of-hearing persons for hearing defects. The purpose of this program is to provide audiological and psychological testing services to the deaf and hard-of-hearing in areas where these services are not otherwise available.

Sec. 2. The State Department of Health may contract with physicians to provide psychological and audiological tests to deaf or hard-of-hearing persons and subject to legislative appropriation of funds may pay a reasonable fee for the services.

Sec. 3. (a) In the program the agency shall include:

- (1) criteria and standards consistent with the purposes of this Act for determining the degree of hearing loss which makes a person eligible for testing under this Act; and
- (2) criteria and standards for determining physicians' qualifications for administering tests under this Act.

(b) The testing service shall be made available only in areas where the service would not otherwise be available.

Sec. 4. The State Department of Health shall establish and collect fees to cover the costs of these services: provided, however, that such services shall not be denied to any resident of the State of Texas because of inability to pay such fee.

[Acts 1967, 60th Leg., p. 2045, ch. 754, eff. Aug. 28, 1967.]

**Art. 4447h. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

The repealed article related to consent for a child to receive medical care from a doctor, hospital or other medical facility, and was derived from Acts 1969, 61st Leg., p. 2138, ch. 742.

See, now, Family Code, § 35.01 et seq.

**Art. 4447i. Consent of Minors to Treatment for Drug Abuse**

A person 13 years of age or older has the capacity to consent to examination and treatment by a licensed physician for any drug addiction, drug dependency, or any condition directly related to drug use. No physician legally qualified to practice medicine in this state shall be liable for the examination and treatment of any person under the provisions of this Act, except for his own acts of negligence.

[Acts 1971, 62nd Leg., p. 71, ch. 37, § 1, eff. March 24, 1971.]

**Art. 4447j. Capacity of Minors to Donate Blood; Compensation**

Any person 18 years or older has the capacity to donate his blood to the American Red Cross, a blood bank operating under the supervision of a licensed physician or a hospital licensed under the provisions of the Texas Hospital Licensing Law provided, however, that any such donee between the age of 18 and 21 shall receive no remuneration or compensation for blood so donated.

[Acts 1971, 62nd Leg., p. 1556, ch. 417, § 1, eff. May 26, 1971.]

**Art. 4447k. Control and Eradication of Pediculosis in Minors**

Sec. 1. The State Department of Health shall establish and develop a state program for the control and eradication of pediculosis of a minor. This program may include procedures for detection and instructions for treatment of same.

Sec. 2. A parent or guardian of a minor who has been found to have pediculosis shall follow the instructions of the State Department of Health or shall place the minor under the care of a licensed physician for the purpose of treating the infestation of pediculosis of a minor.

[Acts 1973, 63rd Leg., p. 59, ch. 40, eff. Aug. 27, 1973.]

**Art. 4447l. Youth Camp Safety and Health Act**

**SUBCHAPTER A. GENERAL**

**Title**

Sec. 1.01. This Act may be cited as the Texas Youth Camp Safety and Health Act.



**Policy and Purpose**

Sec. 1.02. It is hereby declared the policy of this state and the purpose of this Act to protect the safety and health of the children of this state who attend youth camps and to designate the Texas State Department of Health as the responsible state agency to supervise youth camps in Texas by providing and enforcing standards to safeguard safety and health.

**Definitions**

Sec. 1.03. In this Act, unless the context requires a different definition,

(1) board means the State Board of Health,

(2) camper means any minor child who is attending a youth camp either on a day care or boarding basis,

(3) commissioner means the Commissioner of Health of the State of Texas,

(4) department means the State Department of Health,

(5) person means any individual, partnership, corporation, association, or organization,

(6) youth camp means any property or facilities having the general characteristics of a day camp, resident camp or travel camp, as these terms are generally understood, used primarily or in part for recreational, athletic, religious and/or educational activities and accommodating five (5) or more children under eighteen (18) years of age who attend or temporarily reside at the youth camps for a period of, or portions of, four (4) days or more,

(7) youth camp operator means any person who owns, operates, controls or supervises, whether or not for profit, a youth camp.

**Duties of Operators**

Sec. 1.04. Each youth camp operator shall provide each camper with safe and healthful conditions, facilities and equipment, free from recognized hazards which cause or may tend to cause death, serious illness or bodily harm.

**SUBCHAPTER B. ADMINISTRATIVE POWERS AND DUTIES****Principal Authority**

Sec. 2.01. The State Department of Health is the principal authority in the state on matters relating to the condition of safety and health at youth camps in Texas. The department has the powers and duties set out in this Act and all other powers necessary and convenient to carry out its responsibilities.

**Rules and Regulations**

Sec. 2.02. (a) The department shall have authority to make and promulgate rules and regulations consistent with the policy and purpose of this Act and to amend any rule or regulation it makes. In developing such rules and regulations, the department shall consult with

appropriate public and private officials and organizations, and parents and camp operators. It shall be the duty of the department to advise all existing youth camps in this state of this Act and any rules and regulations promulgated under this Act.

(b) The department shall promulgate rules and regulations which establish standards for youth camp safety and health. Such safety and health standards may include consideration of adequate and proper supervision at all times wherever camp activities are conducted; sufficient and properly qualified directors, supervisors and staff; proper safeguards for sanitation and public health; adequate medical services for personal health and first aid; proper procedures for food preparation, handling and mass feeding; healthful and sufficient water supply; proper waste disposal; proper water safety procedures for swimming pools, lakes and waterways, and safe boating equipment; proper maintenance and safe use of motor vehicles; safe buildings and physical facilities; proper fire precautions; safe and proper recreational and other equipment; and proper regard for density and use of premises.

(c) There is created in the department the Advisory Council on Youth Camp Safety to advise and consult on policy matters relating to youth camp safety, particularly on the matter of the promulgation of youth camp safety standards. The council consists of the commissioner, who shall be chairman, and eleven members appointed by the governor from the following groups: one member each from a private nonsectarian camp, a church-related camp, the Girl Scouts of America, the Boy Scouts of America, the Campfire Girls of America, the Young Men's Christian Association, the Young Women's Christian Association, camps for the handicapped, and civic organization camps; and two members who are specially qualified by experience and competence to render service in this capacity. A member is entitled to hold office for two years and until his successor is appointed and qualifies. The governor shall fill vacancies for unexpired terms. Council members serve without compensation but are entitled to be reimbursed for actual expenses incurred in the performance of their duties. The commissioner may appoint special advisory or technical experts and consultants as are necessary to assist the council in carrying out its functions.

(d) No rule or regulation may be promulgated or amended by the department under this Act until a public hearing is held thereon. Notice of a public hearing including the time, date, and location of the hearing and the substance of the proposed rule, regulation, or amendment shall be given by the department to each licensee of a youth camp not less than ten (10) days nor more than thirty (30) days before the hearing. Any interested person may appear at the hearing to present evidence or testimony concerning the proposed rule, regulation, or amendment.

(e) In the event such regulations include provisions requiring physical examinations or inoculations for children or staff, the operator of the youth camp shall be permitted to grant exemption from physical examination and inoculations when such exemptions are requested on the grounds of religious convictions.

#### Required Compliance

Sec. 2.03. No person may own, operate, control or supervise a youth camp in Texas for which a license is required under this Act, without first holding a valid license under this Act and without complying with the provisions of this Act and with any rule, regulation, or order of the department.

#### Licenses

Sec. 2.04. (a) Every person operating a youth camp in Texas on the effective date of this Act shall apply for and obtain a license for each youth camp. Such application shall be on a form provided by the department and shall be submitted in full not later than May 1, 1974. After submission such persons may continue operating until and unless the application is rejected by the department.

(b) Any person who, after the effective date of this Act, desires to operate a youth camp required to be licensed under this Act shall apply for and obtain a license before commencing operations.

(c) Upon receiving applications, the department shall conduct an inspection of applicant's facilities, operations and premises and then shall issue serially numbered licenses to all applicants who operate a youth camp in accord with the provisions of this Act and any rules and regulations promulgated under this Act.

(d) The fee for licensing under this Act shall be five dollars (\$5) and shall be submitted with the application.

#### Renewal

Sec. 2.05. Licenses issued under this Act shall be renewed annually by submission not later than May 1 of each year of an application for renewal of license on a form provided by the department. The annual fee for such license renewal shall be five dollars (\$5) and shall be submitted with the application for renewal of license.

#### Special Fund and Appropriation

Sec. 2.06. (a) The fees for licenses and renewal of licenses collected under this Act shall be deposited in the State Treasury in the General Revenue Fund.

(b) All such fees deposited in the General Revenue Fund, as well as all civil penalties recovered under Subchapter C of this Act and deposited in that fund, are hereby reappropriated to the State Department of Health to be used for the administration of this Act.

#### Revocation

Sec. 2.07. (a) Whenever the department finds that any provision of this Act or of any

rule or regulation promulgated thereunder has been violated, or that a violation has occurred or is occurring on any premises for which a license has been issued, the department shall give written notice to the holder of the license, setting forth the nature of the violation or violations and directing that such violation or violations cease. If the licensee refuses or fails to comply with the notice in the time and manner directed in the notice, the department may initiate steps to revoke the license.

(b) Before revoking a license, the department shall give written notice, by certified or registered mail, to the licensee that revocation is contemplated and the reasons therefor. The notice shall state the time and place for a hearing, at which the licensee may present evidence and testimony. After such hearing, the department may revoke a license.

#### Hearings

Sec. 2.08. The State Board of Health may call and hold hearings, administer oaths, receive evidence, issue subpoenas for witnesses, papers and documents related to the hearing and make findings of fact and decisions with respect to administering the provisions of this Act or rules and regulations promulgated under this Act. The authority to call and hold hearings may be delegated to employees of the department. Reasonable notice of a hearing shall be given to all parties involved.

#### Appeal to Board

Sec. 2.09. Any person affected by any ruling, order or decision of the department may appeal to the State Board of Health by giving written notice of intent to appeal to the Commissioner of Health. The commissioner shall give appellant at least ten (10) days written notice of the time and place for the board meeting at which the appeal will be heard.

#### Power to Enter Property

Sec. 2.10. Employees and agents of the department shall have the right to enter any property licensed or applying for a license to operate a youth camp or any property which is operating a youth camp, for the purpose of investigating and inspecting conditions relating to the safety and health of the campers at such youth camp. Any employee or agent acting under authority of this section who enters a youth camp shall notify the person then in charge of his presence and exhibit proper credentials. Should any employee or agent be refused the right to enter, the department may have the remedies authorized in Section 3.02 of this Act.

#### Power to Examine Records

Sec. 2.11. The department may prescribe reasonable requirements for licensed youth camps to keep records pertaining to matters involving the safety and health of campers. The employees and agents of the State Department of Health may examine during regular business hours any required or other records pertaining to the safety and health of campers.

## Duties of Commissioner

Sec. 2.12. The Commissioner of Health shall exercise the powers and duties conferred upon the State Department of Health by this Act. The commissioner may delegate any of these powers and duties to an employee of the department who shall act as his representative.

## SUBCHAPTER C. ENFORCEMENT

## Violations Prohibited

Sec. 3.01. (a) No person may operate a youth camp in Texas without complying with all provisions of this Act and any rules, regulations and orders of the department.

(b) Any person who violates any provision of this Act or any rule, regulation or order of the department is subject to a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

## Enforcement by Department

Sec. 3.02. Whenever it appears that a person has violated, or is violating or is threatening to violate any provision of this Act or of any rule, regulation or order of the department, then the department may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation or order of the department, the district court shall grant the injunctive relief or civil penalties or both, as the facts may warrant.

## Emergency Enforcement

Sec. 3.03. Whenever it appears that any person is violating, or threatening to violate, any provision of this Act or any rule, regulation or order of the department or any other action of any youth camp that creates an emergency condition that constitutes an imminent danger to the health, safety or welfare of campers at a youth camp, the department may institute in a district court an application for temporary restraining order to halt immediately any such violation or other action creating the emergency condition.

## Venue and Procedure

Sec. 3.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in the county where the defendant resides or in the county where the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any

rule, regulation or order of the department, the court may grant the department, without bond or other undertaking, any prohibitory or mandatory injunction as the facts may warrant, including temporary restraining orders, temporary injunctions and permanent injunctions.

(c) A suit brought under this Act shall be given precedence over other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

(e) All civil penalties recovered in suits instituted by the department under this Act shall be paid to the Youth Camp Health and Safety Fund of the State of Texas.

## Appeal of Department Action

Sec. 4.01. (a) A person affected by any ruling, order or other act of the department may appeal by filing a petition in a district court of Travis County.

(b) The petition must be filed within thirty days after the date of the department's action.

(c) Service of citation on the department must be accomplished within thirty days after the date the petition is filed. Citation may be served on the commissioner or any member of the board.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the department unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a department action, the issue is whether the action is invalid, arbitrary, or unreasonable.

[Acts 1973, 63rd Leg., p. 316, ch. 142, § 1, eff. May 21, 1973.]

Section 2 of the 1973 Act provided: "This Act is cumulative of all other laws and the requirements and responsibilities contained herein shall not affect requirements and responsibilities of other state agencies and political subdivisions in accord with existing statutes."

## Art. 4447m. Costs of Medical Examinations of Rape Victims

Sec. 1. Any law enforcement agency that requests a medical examination of a victim of an alleged rape for use in the investigation or prosecution of the offense shall pay all costs of the examination.

Sec. 2. This Act does not require a law enforcement agency to pay any costs of treatment for injuries.

[Acts 1973, 63rd Leg., p. 704, ch. 299, eff. June 11, 1973.]

## Art. 4447n. Filing and Copies of Autopsy Reports

Sec. 1. In any situation in which an autopsy is provided for under the laws of the State of Texas, the designated physician performing the autopsy shall be required to file said au-

topsy report within thirty (30) days of its request with the designated office under the autopsy order unless certain tests are required to be made which cannot be completed within the required time limit and the designated physician so certifies when said report is filed.

Sec. 2. A copy of the autopsy report shall be furnished to any duly authorized person upon payment of a fee of Five Dollars (\$5). [Acts 1973, 63rd Leg., p. 1688, ch. 613, eff. June 15, 1973.]

#### Art. 4447o. Coordinated Emergency Medical Services Division of State Department of Health

Sec. 1. There is hereby established within the State Department of Health the Coordinated Emergency Medical Services Division. The division shall be under the direction of a director with proven ability as an administrator and organizer.

Sec. 2. (a) The division shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to high risk infants during the neonatal period and persons who are injured or suffering from acute illness.

(b) The division shall divide the state into emergency medical service delivery areas and shall designate at least one hospital in each area as a trauma center. To the extent possible the delivery areas shall coincide with other regional planning areas.

(c) The division shall identify all public and private agencies and institutions which are, or may be, utilized for emergency medical service in each area. The cooperation of all concerned agencies and institutions shall be enlisted in developing a well coordinated plan for delivering emergency medical services in the area.

(d) Each area plan shall include an interagency communications system which will facilitate prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, designated trauma centers, and other concerned agencies and institutions.

(e) Each area plan shall include the use of helicopters which may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces. Heliports at each trauma center shall be designated.

(f) The division shall serve as the single state agency to develop state plans required for participation in federal programs involving emergency medical services and may receive and disburse available federal funds to implement the service programs.

(g) The division shall report to the legislature at the beginning of each regular session the division's progress in developing and implementing a state plan for emergency medical services and shall inform the legislature of any

legislation needed to provide adequate emergency medical services in the state.

[Acts 1973, 63rd Leg., p. 1753, ch. 636, eff. June 16, 1973.]

#### Art. 4447p. Reporting Treatment of Gunshot Wound

Sec. 1. Any physician attending or treating a bullet or gunshot wound, or whenever such case is treated in a hospital, sanitarium, or other institution, the administrator, superintendent, or other person in charge shall report such case at once to the police authorities of the city, town, or county where such physician is practicing and/or where such hospital, sanitarium, or other institution is located.

Sec. 2. Any such person wilfully failing to report such treatment or request therefor shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a period not to exceed six (6) months or by fine not to exceed One Hundred Dollars (\$100.00).

[Acts 1963, 58th Leg., p. 909, ch. 342.]

#### Art. 4447q. Misrepresentation of Nonresident in Application for Medical Aid

Sec. 1. It shall be unlawful for any person who is a resident of a foreign country or another state other than Texas to misrepresent his place of residence when furnishing information in applying for medical aid from any state or county hospital of this State.

Sec. 2. Any person who violates this Act shall upon conviction be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200) and confined to the county jail for a period of not more than six (6) months.

[Acts 1963, 58th Leg., p. 980, ch. 404.]

### CHAPTER TWO. SPECIAL QUARANTINE REGULATIONS

#### Article

- 4448. Governor's Proclamation.
- 4449. May Issue Proclamation.
- 4450. Local Quarantine.
- 4451. Local Subordinate to State Authorities.
- 4452. Shelter to Those Detained.
- 4453. Expenses of Quarantine.
- 4454. Stations Provided.
- 4455. Local Health Officer.
- 4456. Incoming Vessels Stopped.
- 4457. Vessels from Infected Ports.
- 4457a. Vessel Landing from Infected Port.
- 4457b. Passing Station Without Permission.
- 4457c. Going Ashore Without Permission.
- 4457d. Landing Goods Without Permission.
- 4457e. Leaving Quarantine Station.
- 4457f. Violating Quarantine Law.
- 4457g. Evading Quarantine Guards, etc.
- 4457h. Violating Quarantine Regulations.
- 4457i. Persons in Charge of Train or Boat.
- 4457j. Violating Governor's Proclamation.
- 4458. Expenses Itemized.
- 4459. Local Quarantine.
- 4460. County Quarantine.
- 4461. Health Officer at Galveston.
- 4462. To Prescribe Rules, etc.
- 4463. Sale of Condemned Property.
- 4464. Vessels Disinfected.

**Art. 4448. Governor's Proclamation**

The Governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this State, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the Governor the safety and security of the people may require.

[Acts 1925, S.B. 84.]

**Art. 4449. May Issue Proclamation**

Whenever the Governor has reason to believe that the State of Texas is threatened at any point or place on the coast,<sup>1</sup> border or elsewhere within the State with the introduction of<sup>2</sup> dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas State Board of Health, be guarded against by State quarantine, he shall by proclamation, immediately declare said quarantine against any and all such places, and direct the State Board of Health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation; and when from any cause the Governor can not act, and the exigencies of the threatened danger require immediate action, the Texas State Board of Health is empowered to declare quarantine as prescribed in this article, and maintain the same until the Governor shall officially take such action as he may see proper.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill. Probably should read "coast."

<sup>2</sup> So in enrolled bill. Probably should read "or."

**Art. 4450. Local Quarantine**

The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the State shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this State, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the Governor; and, on the receipt of such report, he shall forthwith order the State Health Officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined.

[Acts 1925, S.B. 84.]

**Art. 4451. Local Subordinate to State Authorities**

Whenever quarantine is declared by the Governor or by any county or corporate authorities in the State, such authorities shall establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the

public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the Governor or Texas State Board of Health.  
[Acts 1925, S.B. 84.]

**Art. 4452. Shelter to Those Detained**

The State Board of Health shall furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the said board and approved by the Governor shall be paid by the State.

[Acts 1925, S.B. 84.]

**Art. 4453. Expenses of Quarantine**

All quarantine officers appointed by the Governor shall be selected and commissioned by the Governor, and shall be paid by the State, and all health authorities of the State, or of any county or city thereof, shall obey the rules and regulations prescribed by the Governor or State Board of Health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; except that the officer in charge of the station at Galveston shall receive two hundred dollars per month. Temporary officers, or those commissioned by the Governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the Governor and the State Board of Health.

[Acts 1925, S.B. 84.]

**Art. 4454. Stations Provided**

Each county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the Governor's proclamation declaring quarantine, shall provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns, or cities, and select, appoint and employ a competent physician as health officer, subject to the approval of the Governor, at such stations, and furnish said officer with such guards, employes and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the Governor and State Board of Health may prescribe.

[Acts 1925, S.B. 84.]

**Art. 4455. Local Health Officer**

Whenever on the coast of Texas or elsewhere in this State the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then the Governor shall appoint a health officer and prescribe such regulations for the government of the same as he may deem necessary.

[Acts 1925, S.B. 84.]

**Art. 4456. Incoming Vessels Stopped**

All health officers and all quarantine authorities shall, if deemed necessary, stop each and every vessel from any infected port or district, tho the said vessel may have a clean bill of health. Such health officers or quarantine authorities shall have power to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district. Such officers and authorities shall detain said vessel at quarantine for such length of time as the Governor and State Board of Health may prescribe in their rules and regulations governing quarantine. All such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the Governor and Texas State Board of Health.

[Acts 1925, S.B. 84.]

**Art. 4457. Vessels from Infected Ports**

Any vessel arriving at any quarantine station of this State, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine.

[Acts 1925, S.B. 84.]

**Art. 4457a. Vessel Landing from Infected Port**

After the legal establishment of any quarantine station on the coast of this State, if any vessel shall land or arrive at such station from any infected port without a bill of health from the proper officer of said port, or with a false bill of health, the master or commanding officer of such vessel shall be fined not less than five hundred nor more than five thousand dollars.

[1925 P.C.]

**Art. 4457b. Passing Station Without Permission**

Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this State during the continuance of the quarantine without having first obtained permission from the health officer of such station so to do, shall be imprisoned in the penitentiary not less than two nor more than five years, or be fined not less than five hundred nor more than ten thousand dollars.

[1925 P.C.]

**Art. 4457c. Going Ashore Without Permission**

Any person belonging to or on board of a vessel placed under quarantine who shall go ashore without the written permission of the health officer of the station shall be fined not less than fifty nor more than five hundred dollars.

[1925 P.C.]

**Art. 4457d. Landing Goods Without Permission**

Any master or officer of a vessel placed under quarantine, who shall land or permit to be landed from said vessel any goods, wares, merchandise or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed.

[1925 P.C.]

**Art. 4457e. Leaving Quarantine Station**

Any person detained at any quarantine station who shall wilfully absent himself without leave of the officer having charge thereof, shall be fined not less than ten nor more than one thousand dollars.

[1925 P.C.]

**Art. 4457f. Violating Quarantine Law**

Any health officer, guard or other employé who shall wilfully disobey or in any manner knowingly neglect or fail to perform any duty imposed upon him by the provisions of quarantine laws, rules and regulations of this State, or who shall disobey knowingly an order emanating from superior authority, shall be fined not exceeding one thousand dollars. In the meaning of this article the Governor and State Health Officer shall alone be deemed superior authority.

[1925 P.C.]

**Art. 4457g. Evading Quarantine Guards, etc.**

Any person coming from any port or district infected with yellow fever, or any other infectious or contagious disease, who shall knowingly evade any guard or pass through any cordon of quarantine duly established shall be fined not exceeding one thousand dollars.

[1925 P.C.]

**Art. 4457h. Violating Quarantine Regulations**

Whoever wilfully violates any regulation of the quarantine established by the Governor, the State Health Officer, or the health officer of any county or city of this State, shall be fined not less than ten nor more than one thousand dollars.

[1925 P.C.]

**Art. 4457i. Persons in Charge of Train or Boat**

If any conductor, or person in charge of any train, ship, steamboat or any other kind of common carriers, shall wilfully bring into this State any person or thing contrary to quarantine regulations as proclaimed by the Governor or State Health Officer, such conductor or person so wilfully offending shall be fined not to exceed five hundred dollars.

[1925 P.C.]

**Art. 4457j. Violating Governor's Proclamation**

Any merchant or other person who shall wilfully order the shipment, or wilfully receive any merchandise whose shipment into the State is prohibited by the Governor's proclamation, or any person who wilfully sells and proceeds to deliver such merchandise or other article as above, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

**Art. 4458. Expenses Itemized**

The county, town or city authorities aforesaid, as soon as quarantine ceases to exist, shall forward to the Comptroller an itemized account of all receipts and expenditures made by them, and when approved by the Governor and State Board of Health, said Comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures.

[Acts 1925, S.B. 84.]

**Art. 4459. Local Quarantine**

No provision of this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with, and subordinate to, said provisions and the rules and regulations prescribed by the Governor and State Board of Health.

[Acts 1925, S.B. 84.]

**Art. 4460. County Quarantine**

Whenever the commissioners court of any county has reason to believe that they are threatened at any point within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and should be guarded against by quarantine they may direct their county health officer to declare and maintain said

quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners court to other parts of their respective counties. The medical officers of chartered cities and towns may perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the State Board of Health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine.

[Acts 1925, S.B. 84.]

**Art. 4461. Health Officer at Galveston**

The quarantine or health officer at Galveston shall give bond, with two or more good and sufficient sureties, payable to the Governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the State at his station, and for the faithful performance of his duty.

[Acts 1925, S.B. 84.]

**Art. 4462. To Prescribe Rules, etc.**

The Governor and State Board of Health shall prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at any port on the coast of Texas from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the State without unnecessary restrictions upon commerce and travel.

[Acts 1925, S.B. 84.]

**Art. 4463. Sale of Condemned Property**

The State Health Officer<sup>1</sup> is hereby authorized, with the advice and consent of the Governor, to sell to the best advantage of the State, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of this State, and make due report of said sale or sales to the Governor.

[Acts 1925, S.B. 84.]

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

**Art. 4464. Vessels Disinfected**

Any vessel arriving at a port of this State, and required to be disinfected by the terms of

the Governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and before being released from quarantine shall pay to such quarantine officer such fees as the Governor may prescribe. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as the Governor prescribes. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the Governor for the safe keeping of such collections and shall report and remit them to the State Board of Health at least once every month.

[Acts 1925, S.B. 84.]

### CHAPTER THREE. FOOD AND DRUGS

#### Article

- 4465. Repealed.
- 4465a. Public Health Laws Continued in Force.
- 4466. Duties.
- 4467. Administration and Expenses.
- 4468. Bulletins.
- 4469. Registration.
- 4470 to 4473. Repealed.
- 4474. Milk.
- 4474a. Manufacture and Sale of Filled Milk; Penalty.
- 4475. Baking Powder Compound.
- 4476. Self-rising Flour.
- 4476-1. Flour and Bread, Manufacture, Baking and Sale; Enrichment; Penalties for Violating State or Federal Laws or Regulations.
- 4476-1a. Bakeries and Bakers.
- 4476-2. Oleomargarine; Regulation of Sale, Distribution and Possession; Enrichment; Violations; Label.
- 4476-3. Repealed.
- 4476-3a. Sale of Horse Meat for Human Consumption.
- 4476-4. Corn Meal and Corn Grits; Enrichment.
- 4476-5. Texas Food, Drug and Cosmetic Act.
- 4476-6. Imported Fresh Meats.
- 4476-7. Texas Meat and Poultry Inspection Act.
- 4476-8. Crab Meat; Processing, Transportation and Sale; Regulation and Licensing.
- 4476-9. Sterilization of Dishes; Broken or Cracked Dishes and Unlaundered Napkins.
- 4476-10. Sanitary Employees Where Food or Drink is Handled.
- 4476-11. Drug Treatment Programs; Use of Synthetic Narcotics; Advisory Committee; Rules and Regulations.
- 4476-12. Sale of Preparations Containing Thallium Sulphate.
- 4476-13. Hazardous Substances; Labeling; Sale.
- 4476-14. Dangerous Drugs.
- 4476-15. Controlled Substances Act.
- 4476-16. Sale of Tobacco to Minor.

**Art. 4465. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

**Art. 4465a. Public Health Laws Continued in Force**

Articles 4414, 4415, 4416, 4417, and 4418, Revised Civil Statutes of 1925, are hereby repealed, Article 4465, Revised Civil Statutes of 1925, is hereby repealed, and the powers and duties vested by Chapter 3 of Title 71, R.S. 1925, in the Director of the Food and Drug Division of the State Department of Health are hereby vested in the State Health officer<sup>1</sup>, to be hereafter exercised by him or by a division

director within his Department and subject to his control under the terms of this Act. All other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer,<sup>1</sup> and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except insofar as the same may be in conflict with the provisions of this Act.

[Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

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

### Art. 4466. Duties

The director<sup>1</sup> shall:

1. Keep his office and laboratory in Austin.

2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture.

3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.

4. Make complaint and institute proceedings against any manufacturer or person who violates any provision of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.

5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.



**Art. 4467. Administration and Expenses**

The Director<sup>1</sup> may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer<sup>1</sup> he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the Director's bond. The Director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the Director and his assistants and deputies shall be paid by the State, the amounts thereof to be audited by the Comptroller.

[Acts 1925, S.B. 84.]

<sup>1</sup> Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.

**Art. 4468. Bulletins**

The Director<sup>1</sup> may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division.

[Acts 1925, S.B. 84.]

<sup>1</sup> Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.

**Art. 4469. Registration**

All manufacturers of foods and drugs doing business in the State of Texas and all such persons, firms, corporations, who import or bring into the State of Texas, for sale or distribution, from any place not a part or possession of the United States any article of food, drug or chemical, shall annually register with the State Department of Health and pay a fee of One Dollar (\$1.00) for such registration on or before the 1st day of September. Where a person, firm or corporation operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

The term "manufacture" as used in this Article shall mean the process of combining or purifying articles of food or drugs and packaging same for sale to the consumer, either by wholesale or retail, provided, however, that a pharmacist, registered under the laws of this state, shall not be deemed a manufacturer, when he fills a regular licensed physician's prescription, or when such pharmacist compounds or mixes drugs or medicines in his professional capacity. Any person, firm or corporation who represent themselves as responsible for the purity and the proper branding of any article of food or drug, by placing or having placed their name or names and address upon the label of any food or drug, shall be deemed a manufacturer and included within the meaning of this Article. Any person, firm or corporation who imports into this state from any place not within the continental limits of the United States, any article of food or drug, shall be importers within the meaning of this Article.

All registration fees received by the State Health Department shall be deposited in the State Treasury to the credit of the General Revenue Fund and shall be expended only upon appropriation by the Legislature.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 265, ch. 159, § 1; Acts 1961, 57th Leg., p. 839, ch. 375, § 1.]

**Arts. 4470 to 4473. Repealed by Acts 1961, 57th Leg., p. 823, ch. 373, § 24**

The repealed articles, derived from

Acts 1911, 32nd Leg., p. 76, ch. 47, §§ 1, 4

Acts 1937, 45th Leg., p. 539, ch. 265, § 1

Acts 1951, 52nd Leg., p. 23, ch. 16, § 1

prohibited the sale or exchange of adulterated or misbranded food or drugs; defined the terms "adulterated" and "misbranded" and regulated the addition of preservatives to food.

See, now, Texas Food, Drug and Cosmetic Act, art. 4476-5.

**Art. 4474. Milk**

No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly printed in letters not less than one inch in length.

[Acts 1925, S.B. 84.]

**Art. 4474a. Manufacture and Sale of Filled Milk; Penalty**

Sec. 1. Where used in this Act:

(a) The word person shall mean any individual, firm, copartnership, or corporation.

(b) Filled milk shall include any milk, cream, or skimmed milk whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added or which has been blended or compounded with any fat or oil other than milk fat so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated. Provided, that this definition shall not be construed to include any distinctive proprietary food compound prepared, and designated for feeding infants and young children, and customarily used on the order of a physician.

Sec. 2. It shall hereafter be unlawful to handle for use, manufacture, or sale within this State any form of filled milk. It is declared that filled milk is an adulterated article of food injurious to the public health, and its sale constitutes a fraud upon the public. It shall be unlawful for any person to manufacture within this State or to ship or deliver for shipment in intrastate commerce any filled milk.

Sec. 3. Any person violating any of the provisions of this Act, whether as owner, agent, manager, clerk, or employee, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than One Hundred Dollars (\$100), nor more than One Hundred and Fifty Dollars (\$150) for each offense, or shall be confined in the County Jail for not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment; and each transaction and violation of this Act shall constitute a separate offense.

Sec. 4. The State Health Officer, by himself or his assistants, chemists, inspectors, deputies, or agents, shall be charged with the enforcement of this Act, and he shall have full rights of ingress and egress to and on the premises of any person handling or selling or offering for sale any milk or milk products in this State, and shall have the authority and right to demand and have free access to the books and records of such persons at any and all reasonable times, and shall have the right and authority to demand and have sworn statements and reports as he may deem necessary to the enforcement of this Act.

[Acts 1935, 44th Leg., p. 717, ch. 310.]

#### Art. 4475. Baking Powder Compound

Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated.

[Acts 1925, S.B. 84.]

#### Art. 4476. Self-rising Flour

Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language, containing the name and domicile of the manufacturer or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent, by weight, of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than

three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated. Self-rising Flour is defined to be a combination of flour, salt, and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be Bicarbonate of Soda, and either Calcium Acid Phosphate, Sodium Aluminum Sulphate, Cream of Tartar, Tartaric Acid or combinations of the same.

[Acts 1925, S.B. 84.]

#### Art. 4476-1. Flour and Bread, Manufacture, Baking and Sale; Enrichment; Penalties for Violating State or Federal Laws or Regulations

##### Definitions

Sec. 1. (a) The term "flour" includes and shall be limited to flour of every kind and description made wholly or partly from wheat which conforms to the definition and standard of identity of flour, white flour, wheat flour and plain flour as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2574-82, May 27, 1941), but excludes whole wheat flour made only from the whole wheat berry with no part thereof removed, and also excludes special packaged flours not used for bread baking, such as cake, pancake, cracker, and pastry flours;

(b) The term "bread" includes and shall be limited to bread of every kind and description made wholly or partly from wheat flour which conforms to the definition and standard of identity of bread as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2771-72, June 7, 1941), but excludes bread containing no wheat flour or bread containing no wheat flour or breads made from whole wheat flour;

(c) The term "enrichment" as applied to flour or bread means the addition thereto of vitamins and other ingredients of the nature required by this Act; and the terms "enriched flour" (as defined in Federal Register, Vol. 6, pp. 2579-81, May 27, 1941), and "enriched bread" (as defined in Federal Register, Vol. 6, p. 2772, June 7, 1941), means flour or bread, as the case may be, which has been enriched to conform to the requirements of this Act.

(d) The term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any unincorporated organization.

(e) The term "appropriate federal agency" means the Federal Security Agency, or any agency or department or administrative federal officer charged with the enforcement and administration of the Federal Food, Drug and Cosmetic Act.<sup>1</sup>

##### Enrichment of Flour; Ingredients; Application

Sec. 2. On and after the effective date of this Act it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, any

flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such flour:

(a) Not less than 1.66 milligrams of Vitamin B1 (thiamin); not less than 6 milligrams of nicotinic acid (also recognized under the name of niacin) or nicotinic acid amide (also known under the name of niacin amide); and not less than 6 milligrams of iron (Fe). These ingredients and amounts are in accordance with the definition of enriched flour as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2579-82, May 27, 1941; and Vol. 6, pp. 6175-76, December 3, 1941), postponing the effective date for the addition of riboflavin as a required ingredient to enriched flour.

(b) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, or by a combination of these methods, or by any method which is permitted by the Federal Security Agency with respect to flour introduced into interstate commerce.

(c) The State Health Officer<sup>2</sup> is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the State or Federal definition of enriched flour when promulgated or as may be from time to time amended.

(d) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

Provided, however, that the terms of this Act shall not apply to flour sold to bakers who elect to enrich their products by other means than by the use of enriched flour as provided in Section 4.

(e) The terms of this Act shall not apply to flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixture of various portions of the wheat berry such products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described herein.

(f) The terms of this Act shall not apply to flour ground for the wheat producer whereby the miller is paid in wheat or feed for the grinding service rendered, except insofar as such a mill may manufacture toll wheat into flour and sell or offer for sale such flour, whereupon this Act shall be applicable; nor shall the provisions of this Act apply to farmers in exchanging their wheat for flour, or having the same ground into flour and disposing of the same for their own use or the use of farm labor on their farms.

#### Interstate Shipments

Sec. 3. On and after the effective date of this Act it shall be unlawful for any person to manufacture, bake, sell, or offer for sale, or to receive in interstate shipment for sale for human consumption in this state, any bread or flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such bread or flour:

(a) Not less than 1.0 milligram of Vitamin B1 (thiamin); not less than 4.0 milligrams of nicotinic acid (niacin) or nicotinic acid amide (niacin amide); and not less than 4.0 milligrams of iron (Fe);

(b) The State Health Officer is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the Federal definition of enriched bread when promulgated or as from time to time amended.

#### Enrichment of Bread; Ingredients

Sec. 4. (a) The enrichment of bread may be accomplished through the use of enriched flour, enriched yeast, other enriched ingredients, synthetic vitamins, harmless iron salts, or by any combination of harmless methods which will produce enriched bread which meets the requirements of Section 3.

(b) Iron shall be added only in forms that are assimilable and harmless and which do not impair the enriched bread.

#### Labeling

Sec. 5. It shall be unlawful to sell or offer for sale in this state any enriched flour or enriched bread which fails to conform to the labeling of the State Food and Drug and of the Federal Food, Drug and Cosmetic Act, and the regulations promulgated thereunder by the appropriate federal or state agency, with respect to flour or bread introduced into interstate commerce.

#### State Health Officer, Powers Under Act

Sec. 6. (a) The State Health Officer is authorized as the administrative agency and is hereby directed:

(1) To make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this Act, including, but without being limited to, such orders, rules, and regulations as he is hereinafter specifically authorized and directed to make.

(2) From time to time to adopt such regulations changing or adding to the required ingredients for flour or bread specified in Sections 2 and 3 as shall be necessary to conform to the definitions and standards of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the Federal Food, Drug and Cosmetic Act.

(b) In the event of the finding by the State Health Officer that there is an existing short-

age or imminent shortage of any ingredient required by Sections 2 and 3 of this Act, with the result that the sale and distribution of flour or bread may be substantially impeded by the enforcement of this Act, the State Health Officer shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour and bread. Whenever the State Health Officer finds that such shortage no longer exists, he shall issue an order, to be effective not less than ten days after publication thereof, revoking such order. Any such findings as to the existence or imminence of any such shortage, or the cessation thereof, may be made by the State Health Officer without any hearing, on the basis of an order of, or factual information supplied by the appropriate federal agency (as hereinbefore defined) or the War Production Board or any similar federal agency. In the absence of any such order or factual information the State Health Officer, upon receiving the sworn statement of any persons subject to this Act that such a shortage exists or is imminent or has ceased, shall, within ten days thereafter, hold a public hearing with respect thereto, at which time any interested person may present evidence in support of such sworn statement, and any such finding by the State Health Officer may be based upon the evidence so presented. The State Health Officer shall publish notice of any such hearing at least ten days prior thereto.

(c) All orders, rules, and regulations adopted by the State Health Officer pursuant to this Act shall be published in the manner hereinafter prescribed, and within the limits specified by this Act, shall become effective upon such date as the State Health Officer shall fix.

(d) Whenever under this Act publication of any notice, order, rule or regulation is required, such publication shall be made at least three times in ten days in newspapers of general circulation in three different sections of the state.

(e) The State Health Officer is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this Act, through any officers or employees under his supervision; and all such officers and employees shall have authority to enter to inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold, or held, or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers and labeling.

#### Violations of Act or Rules and Regulations

Sec. 7. Any person who violates any of the provisions of this Act, or the orders, rules or regulations promulgated by the State Health Officer under authority thereof, shall, upon conviction thereof, be subject to fine for each and every offense, in a sum not exceeding One Hundred (\$100.00) Dollars or to imprisonment

for not more than thirty days, or both such fine and imprisonment.

[Acts 1943, 48th Leg., p. 305, ch. 199.]

<sup>1</sup> 21 U.S.C.A. §§ 301 to 392.

<sup>2</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.

#### Art. 4476-1a. Bakeries and Bakers

Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars:

**Rule 1. Bakery Building.** Any building occupied or used as a bakery wherein is carried on the business of the production, preparation, storage or display of bread, cakes, pies, and other bakery products intended for sale for human consumption, shall be clean, properly lighted, drained and ventilated. Every such bakery shall be provided with adequate plumbing and drainage facilities including suitable wash sinks, toilets and water closets. All toilets and water closets shall be separated and apart from the rooms in which the bakery products are produced or handled. All wash sinks, toilets and water closets shall be kept in a clean and sanitary condition, and shall be in well lighted and ventilated rooms. The floors, walls and ceilings of the rooms in which the dough is mixed and handled, or the pastry prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled or stored, shall be kept and maintained in a clean, wholesome and sanitary condition. All openings into such rooms, including windows and doors, shall be kept properly screened or otherwise protected to exclude flies. No working rooms shall be used for purposes other than those directly connected with the preparing, baking, storage and handling of food, and shall not be used as washing, sleeping, or living rooms, and shall, at all times, be separated and closed from the living and sleeping rooms. Rooms shall be provided for the changing and hanging of wearing apparel apart and separate from such work rooms and such rooms as to be provided for the changing and hanging of wearing apparel shall be kept clean at all times.

**Rule 2. Sanitation.** No employe or other person shall sit or lie upon any table, bench, trough or shelf which is intended for the dough or bakery products. No animals or fowls shall be kept or allowed in any bakery or other place where bread or other bakery products are produced or stored. Before beginning the work of preparing, mixing and handling the ingredients used in baking, every person engaged in the preparation or handling of bakery products shall wash his hands and arms thoroughly, and for this purpose sufficient wash basins and soap and clean towels shall be provided. No employe or other person shall use tobacco in any form in

## Rule 2

any room where bakery products are manufactured, wrapped or prepared for sale. No master baker, person or any employe who is affected with any contagious or infectious disease shall be permitted to work in any bakery or be permitted to handle any product therein, or delivered therefrom.

**Rule 3. Clean condition.** The wagons, boxes, baskets and other receptacles in which bread, cake, pies or other bakery products are transported, shall be kept in a clean condition at all times and free from dust, flies and other contamination. All show cases, shelves or other places where bakery products are sold, shall be kept well covered, properly ventilated, well protected from dust and flies, and shall be kept in a clean and wholesome condition at all times. Boxes or other receptacles for the storing or receiving of bread and other bakery products, before and after the retail stores and selling places are open, shall be constructed and placed so as to be free from the contamination of streets, alleys and sidewalks, and shall be raised at least ten inches from the sidewalk or street, and shall be kept clean and sanitary, and no bread shall be placed in any box along with any other articles of food than bakery products. All such boxes shall be provided with private locks and shall be locked at all times except when open to receive or remove bread or other bakery products and when being cleaned.

**Rule 4. Ingredients must be good.** All material used in the production or preparation of bakery products shall be stored, handled and kept in a way to protect them from spoiling and contamination, and no material shall be used which is spoiled or contaminated, or which may render the bread or other bakery products unwholesome or unfit for food. The ingredients used in the production of bread and other bakery products and the sale or offering for sale of bread and other bakery products shall comply with the provisions of the laws against adulteration and misbranding. No ingredients shall be used which may render the bread or other bakery products injurious to health.

**Rule 5. Weight of bread.** Bread to be sold by the loaf made by bakers engaged in the business of wholesaling and retailing bread, shall be sold based upon any of the following standards of weight, namely: a loaf weighing one pound or 16 ounces, a loaf weighing 24 ounces or a pound and a half, and loaves weighing three pounds, or some other multiple of one pound or 16 ounces. These shall be the standard of weight for bread to be sold by the loaf. This rule shall not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less. Variations, or tolerance, shall not exceed one ounce

per pound over or under the said standard within a period of 24 hours after baking.

Nothing contained in this rule shall in any way inhibit or restrict the authority of the Commissioner of Agriculture under Chapter 444, Regular Session, Acts of the 60th Legislature, 1967, as amended (Article 1037, Vernon's Texas Penal Code).<sup>1</sup>

[1925 P.C.; Acts 1973, 63rd Leg., p. 739, ch. 320, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Transferred to Civil Statutes, Art. 5726a.

### Art. 4476-2. Oleomargarine; Regulation of Sale, Distribution and Possession; Enrichment; Violations; Label

#### Definition; Vitamin A

Sec. 1. On and after the passage of this Act it shall be unlawful for any manufacturer, processor or dealer in oleomargarine in the State of Texas to sell or offer for sale any such product within this state which does not contain at least 9,000 United States Pharmacopeia Units of Vitamin A per pound. Oleomargarine is defined for the purpose of this Act in the Federal Register, Vol. 6, pp. 2762-63, June 7, 1941.

#### Administrative Agency; Changing Specifications

Sec. 2. The State Health Officer<sup>1</sup> is authorized as the administrative agency and is hereby authorized and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to any changes in the ruling of the Federal Security Agency concerning the addition of vitamins to oleomargarine, established in the Federal Register, Vol. 6, pp. 2761-63, June 7, 1941, or as may be from to time amended.

#### Enforcement; Entering Premises; Penalty

Sec. 3. The State Health Officer is empowered and directed to enforce this Act through any officers or employees under his supervision, and to enter upon the premises of any manufacturer, processor or refiner, or upon the premises of any person engaged as a retail or wholesale dealer in oleomargarine, for the purpose of collecting samples for analyses or making such investigations as may be necessary to properly enforce the same. Any person found by a court of competent jurisdiction to be guilty of violating the terms of this Act shall be punishable by a fine of not more than One Hundred (\$100.00) Dollars, or by imprisonment for not more than thirty days for each and every offense.

#### Shortage of Vitamin

Sec. 4. Whenever any person, firm, or corporation subject to the provisions of this Act shall submit to the State Health Officer an affidavit claiming a shortage or imminence of shortage of any vitamin added to or to be added to oleomargarine as required by this Act, the State Health Officer shall request information from the War Production Board or other Federal agency responsible for information concerning said availability. If factual infor-

mation from said source can be obtained within ten days this information shall be considered as final and the State Health Officer is hereby instructed to act thereon. However, if said information is not available within the prescribed time the State Health Officer shall call for a public hearing to be held within ten days after notice. If the testimony presented shows that the sale and distribution of oleomargarine may be substantially impeded by the enforcement of the provisions of this Act, he shall authorize the sale and distribution of oleomargarine until adequate supplies of such vitamins become available in the judgment of the State Health Officer, based on information from said Federal agencies or testimony at a public hearing.

#### Labeling

Sec. 5. All oleomargarine sold in the State of Texas must be labeled in accordance with the State Food and Drug Laws and with the regulations of the Federal Security Agency governing the labeling of oleomargarine with added Vitamin A sold in interstate trade. Oleomargarine labeled in accordance with Federal Laws, rules and regulations shall be deemed sufficient compliance with the laws, rules and regulations of the State of Texas.

#### Repeal of Inconsistent Laws

Sec. 6. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

#### Provisions Severable

Sec. 7. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1943, 48th Leg., p. 348, ch. 227.]

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

**Art. 4476-3. Repealed by Acts 1969, 61st Leg., p. 337, ch. 123, § 412, eff. Sept. 1, 1969**

See, now, art. 4476-7.

**Art. 4476-3a. Sale of Horse Meat for Human Consumption**

#### Horse Meat Defined

Sec. 1. By the term "horse meat" as used in this Act is meant the meat or flesh of any animal of the equine genus.

#### Sale or Possession for Sale Unlawful

Sec. 2. It shall be unlawful for any person to sell, offer or exhibit for sale, or have in his possession with intent to sell as food for human consumption, any quantity of horse meat.

#### Transfer to Person Intending to Sell

Sec. 3. It shall be unlawful for any person to transfer the possession of any horse meat to

any other person when the person so transferring knows, or in the exercise of a reasonable discretion should have known, that the person receiving the horse meat intends to sell it, offer it for sale, exhibit it for sale or keep it in his possession with intent to sell it as food for human consumption.

#### Prima Facie Evidence of Violation

Sec. 4. Any of the following facts shall be prima facie evidence that horse meat was intended to be sold in violation of this Act as food for human consumption:

1. The presence of horse meat in any quantity in any retail store where the meat of cattle, sheep, swine, or goat is being exhibited or kept for sale, unless such horse meat be in a package or container not exceeding five (5) pounds in weight and plainly marked "horse meat."

2. The presence of horse meat in any quantity within the establishment, warehouse, meat locker, meat cooler or other place of storage or handling of any wholesaler of the meat of cattle, sheep, swine, or goat, unless such horse meat be in a container as described above.

3. The presence of horse meat mixed and commingled with the meat of cattle, sheep, swine, or goat in hamburger, sausage or other processed meat products.

4. The transportation of horse meat between the hours of 10:00 P.M. and 4:00 A.M. unless said horse meat is in individual packages or containers not to exceed five (5) pounds in weight each and plainly marked "horse meat" for animal consumption.

5. The presence of horse meat in, or the delivery or attempted delivery of horse meat to any restaurant or cafe.

6. The presence of horse meat in or the delivery or attempted delivery of horse meat to any establishment preparing, canning, or processing meat food products from the meat of cattle, sheep, swine, or goats, such as, but not limited to, chili con carne, beef hash, and beef stew.

#### Ordinances

Sec. 5. Nothing contained in this Act shall affect any provision of any city ordinance regulating the sale or possession of horse meat and the licensing of dealers thereunder and the only provisions of such ordinances that shall be affected and set aside by the passage of this Act, shall be such provisions as are directly in conflict herewith.

#### Penalty; Injunction

Sec. 6. Any person violating any of the provisions of this Act, shall be fined not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or both. For any second or succeeding violation of this Act, any person so violating the same

shall be confined in the penitentiary not less than two (2) years, nor more than five (5) years.

Upon conviction of a violation of this Act, the Court in pronouncing sentence shall also enter a judgment enjoining the defendant from slaughtering animals, selling meat, transporting meat or in any manner engaging in the business of purveying meat to the public as food for human consumption. Each day any such judgment and injunction is violated shall constitute a separate contempt.

#### Repeal

Sec. 7. Section 18 of Acts of the Forty-ninth Legislature, 1945, Page 554, Chapter 339,<sup>1</sup> where in conflict herewith, is hereby expressly repealed to the extent of such conflict only.

<sup>1</sup> Repealed article 4476-3, § 18.

#### Partial Invalidity

Sec. 8. If any provision, section, subsection, sentence, clause or phrase of this Act, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Act or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Legislature of the State of Texas in adopting this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Act are declared to be severable.

[Acts 1949, 51st Leg., p. 78, ch. 45; Acts 1949, 51st Leg., p. 1055, ch. 545, § 1.]

### Art. 4476-4. Corn Meal and Corn Grits; Enrichment

#### Definitions

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

(a) "corn meal" means all types of corn meal intended for human consumption including corn meal mixes and self-rising corn meal;

(b) "corn grits" means all types of corn grits intended for human consumption;

(c) "person" means an individual, corporation, partnership, association, joint stock company, trust, or any other unincorporated organization;

(d) "appropriate Federal agency" means the Federal Security Agency, or any other Federal agency, charged with the enforcement and administration of the Federal Food, Drug, and Cosmetic Act;<sup>1</sup>

(e) "commissioner" means the Commissioner of Health of the State of Texas.

#### Required Vitamin and Mineral Content

Sec. 2. On and after the effective date of this Act, it shall be unlawful for any person, except as hereinafter provided, to sell, or offer for sale, or exchange for any services or goods, in this state, any corn meal or corn grits unless each pound of corn meal and each pound of corn grits contains:

(a) not less than 2.0 milligrams and not more than 3.0 milligrams of Vitamin B-1 (thiamine);

(b) not less than 1.2 milligrams and not more than 1.8 milligrams of riboflavin;

(c) not less than 16 milligrams and not more than 24 milligrams of niacin or niacin amide;

(d) not less than 13 milligrams and not more than 26 milligrams of iron.

#### Optional Ingredients

Sec. 3. Each pound of corn meal and each pound of corn grits may contain both or either of the following optional ingredients:

(a) not less than 250 U.S.P. units and not more than 1,000 U.S.P. units of Vitamin D;

(b) not less than 500 milligrams and not more than 750 milligrams of calcium.

#### Sale of Unlabeled Corn Meal or Corn Grits

Sec. 4. On and after the effective date of this Act, it shall be unlawful for any person except as hereinafter provided, to sell, or offer for sale, or exchange for any services or goods, in this state, any corn meal or corn grits which is not labeled in accordance with such requirements as may be prescribed by the Commissioner as provided in Section 6 of this Act.

#### Enforcement of Act

Sec. 5. This Act shall be enforced by the Commissioner who is authorized to make rules and regulations for carrying out the provisions thereof. The authority vested in the Commissioner by this Act may be exercised by him through such officers or employees of the State Health Department as he may designate. The Commissioner or such employees or officers as he may designate are hereby authorized to enter upon any business premises or vehicles where corn meal or corn grits may be found, for the purpose of enforcing this Act, and to take samples of, and inspect and analyze, corn meal and corn grits, which are offered for sale, or which have been sold or exchanged for services or goods.

#### Uniformity of Requirements

Sec. 6. In order to avoid confusion and to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements relating to the manufacture and distribution of corn meal and corn grits, it is desirable that there should be uniformity between the requirements of this state and the Federal Government relating to such products:

(a) the vitamins and minerals and the amounts thereof required or permitted to be contained therein;

(b) the manner of enrichment with vitamins and minerals;

(c) methods of testing to determine conformance with the provisions of law;

(d) labeling requirements.

#### Application of Act

Sec. 7. (a) This Act shall not apply to the delivery of corn meal or corn grits by a miller to a corn producer who has had same ground by the miller from the producer's corn for use in the producer's own home when the miller is paid in corn or in money for such milling services; however, if said producer desires the health benefits for his family and requests enrichment, then the miller is required by this Act to enrich according to the hereinbefore mentioned standards.

(b) This Act shall not apply to the sale of corn meal or corn grits if the purchaser furnishes to the seller a certificate, in such form as the Commissioner, by regulation, shall prescribe, certifying that he will use said corn meal or corn grits solely in the production of corn meal or corn grits enriched as required by this Act, or other legitimate products not covered by this Act.

(c) This Act shall not apply to the sale of whole grain corn meal or whole grain corn grits.

(d) This Act shall not apply to the sale or use for human consumption of corn meal or corn flour commonly known as "masa" which is used in the preparation of Mexican food such as tortillas and tamales.

#### Penalties

Sec. 8. Any person found wilfully or culpably guilty of violating any provision of Section 2, 4, 6 or 9 of this Act, or any rule or regulation made by authority thereof shall be subject for each and every offense to imprisonment not exceeding thirty (30) days, or a fine of not more than One Hundred Dollars (\$100.00) or both such fine and imprisonment.

#### Seizure and Detention of Products; Disposal; Release

Sec. 9. Whenever the Commissioner has probable cause to believe that any corn meal or corn grits has been sold, or offered for sale, or exchange, in violation of any of the provisions of this Act, he may seize and affix to such product a notice to that effect, detaining the product and warning all persons not to dispose of it by sale or otherwise without his permission. It shall be a violation of this Act, subject to the penalties set forth in Section 8, for any person to dispose of such product by sale or otherwise without such permission. The Commissioner may, in his discretion, release the corn meal or corn grits for feed purposes, or for shipment out of the State of Texas, for human consumption if brought into compliance with this Act and upon payment of all costs or

expenses incurred in any proceeding connected with such seizure and withdrawal.

#### Disposal of Nonconforming Corn Meal and Corn Grits

Sec. 10. All processors, distributors, millers, wholesalers, and retailers shall be allowed sixty (60) days after the effective date of this Act to dispose of any corn meal or corn grits on hand not conforming to the provisions of this Act.

[Acts 1959, 56th Leg., p. 775, ch. 353.]

<sup>1</sup> 21 U.S.C.A. §§ 301 to 392.

#### Art. 4476-5. Texas Food, Drug and Cosmetic Act

##### Citation of Act

Sec. 1. This Act may be cited as the Texas Food, Drug and Cosmetic Act.

##### Definitions

Sec. 2. For the purpose of this Act:

(a) The term "Commissioner of Health" means the Commissioner of Health of the State of Texas.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles designed or intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure of any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(e) The term "devices," except when used in Paragraph (k) of this section and in Sections 3(g), 11(f), 15(c) and 18(c), means instruments, apparatus and contrivances, including their components, parts, accessories, designed or intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals."

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of such articles,



except that such term shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the

safety and effectiveness of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this Act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(r) The term "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, containing not less than eighty per centum (80%) by weight of milk fat, all tolerances having been allowed for.

(s) The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale.

(t) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135K) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(u) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(v) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the

characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity; or

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(3) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Food, Drug and Cosmetic Act, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) of the Meat Inspection Act of March 4, 1907 (34 Stat. 1260) as amended and extended (21 U.S.C. 71 and the following).

#### Unlawful and Prohibited Acts

Sec. 3. The following acts and the causing thereof within the State of Texas are hereby declared unlawful and prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) The adulteration or misbranding of any food, drug, device, or cosmetic;

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Sections 12 or 16;

(e) The dissemination of any false advertisement. By false advertising is meant all misrepresentations disseminated in any manner or by any means other than the labeling for the purpose of inducing or which are likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(f) The refusal to permit entry or inspection, or to permit the taking of samples, as authorized by Section 21;

(g) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic;

(h) The removal or disposal of a detained article in violation of Section 6;

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded;

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this Act;

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under Section 16, or that such drug complies with the provisions of such Section;

(l) The acceptance by any person of an unused prescription or drug, in whole or in part, after it has been originally dispensed or sold, for the purpose of resale to any person.

#### Injunction against Violations

Sec. 4. In addition to the remedies herein-after provided the Commissioner of Health is hereby authorized to apply to any district court where the offense occurred for, and such court shall have jurisdiction after due notice and show cause hearing to grant, a temporary or permanent injunction restraining any person from violating any provision of Section 3; irrespective of whether or not there exists an adequate remedy at law.

#### Violation a Misdemeanor; Penalties

Sec. 5. (a) Any person who violates any of the provisions of Section 3 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00); and for the second or subsequent offense shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for a period of not more than one year, or both such fine and imprisonment.

(b) No person shall be subject to the penalties of Subsection (a) of this Section, for having violated Section 3(a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he re-

ceived in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this Section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner of Health to furnish the Commissioner of Health the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States who caused him to disseminate such advertisement.

#### Detention and Condemnation of Product

Sec. 6. (a) Whenever a duly authorized agent of the Commissioner of Health finds or has good reason to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous within the meaning of this Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained, and warning all persons not to remove from the premises or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove from the premises or dispose of such detained article by sale or otherwise without such permission. In the case of perishable goods, such goods may be moved with the permission of the Commissioner of Health, or his agent, to a place suitable for proper storage.

(b) When an article detained under Subsection (a) has been found by such agent to be adulterated, or misbranded, the Commissioner of Public Health or his agent shall petition the judge of the county or district court in whose jurisdiction the article is detained for an order for condemnation of such article. When such agent has found that an article so detained is not adulterated or misbranded, he shall promptly remove the tag or other marking.

(c) If the court finds that a detained article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Commission-

er of Health. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner of Health that the article is no longer in violation of this Act.

(d) Whenever the Commissioner of Health or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, or fruit which is unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner of Health, or his authorized agent, shall forthwith condemn, or in any manner render the same unsalable as human food.

#### Criminal Proceedings; Notice

Sec. 7. (a) It shall be the duty of each district attorney or county attorney, to whom the Commissioner of Health reports any violation of this Act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

(b) If it is found that the detained article is adulterated or misbranded and such article is voluntarily destroyed or decreed to be destroyed, no criminal proceeding shall follow against the owner or claimant thereof before such person shall be given appropriate notice and an opportunity to present his views before the Commissioner of Health and show cause either orally or in writing why such criminal action should not be instituted.

#### Minor Violations; Notice or Warning

Sec. 8. Nothing in this Act shall be construed as requiring the Commissioner of Health to report for the institution of proceedings under this Act, minor violations of this Act, whenever the Commissioner of Health believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

#### Regulations; Duty to Promulgate

Sec. 9. Whenever in the judgment of the Commissioner of Health such action will promote honesty and fair dealing in the interest of consumers, the Commissioner of Health shall promulgate regulations of general application fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Commissioner of Health shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

#### Adulterated Food

Sec. 10. A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may

render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) (A) if it bears or contains any added poisonous or added deleterious substance (except a pesticide chemical in or on a raw agricultural commodity and except a food additive) which is unsafe within the meaning of Section 13; or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 13, or (C) if it is, or it bears or contains, any food additive which is unsafe within the meaning of Section 13; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 13, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 13 and clause (C) of this Section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; or (4) if it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or whereby it may have been rendered injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or (5) if it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared;

or (6) if it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Bureau of Animal Industry or the Commissioner of Health.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(d) If it bears or contains a coal-tar color or other than one certified under authority of the Federal Act.

#### Misbranded Food

Sec. 11. A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If it is offered for sale under the name of another food;

(c) (1) If it is an imitation of another food unless its label bears the word imitation; (2) In type of uniform size and prominence and immediately thereafter the name of the food imitated; (3) Except in cases of mixtures and compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced. No one administering this law may constitute oleomargarine as an imitation of butter;

(d) If its container is so made, formed, or filled as to be misleading;

(e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the content in terms of weight, measure, or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Commissioner of Health;

(f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or de-

vices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Section 9, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(h) If it purports to be or is represented as:

(1) A food for which a standard of quality has been prescribed by regulations as provided by Section 9, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) A food for which a standard or standards of fill of container have been prescribed by regulations as provided by Section 9, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(i) If it is not subject to the provisions of paragraph (g) of this Section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredients; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided that, to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner of Health; provided further, that the requirements in paragraphs (c)(2), and (e)(1) shall not apply to any bottled carbonated drinks or still soft drinks and, provided further, that clause (2) of paragraph (i) shall not apply to any bottled carbonated drinks or still soft drinks or the dispensing of carbonated soft drinks or still soft drinks in single service cups. Nothing in this law shall be construed as requiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except in so far as the provisions of this law require to

secure freedom of adulteration or misbranding;

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner of Health determines to be, and by regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(k) If it bears or contains any artificial flavorings, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner of Health. The provisions of this paragraph and paragraph (g) and (i) with respect to artificial coloring is not to apply in the case of butter, cheese and ice cream.

#### Emergency Permit Control

Sec. 12. (a) Whenever the Commissioner of Health finds after investigation that the distribution in Texas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, or permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner of Health as provided by such regulations.

(b) The Commissioner of Health is authorized to suspend immediately upon notice any permit issued under authority of this Section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Health shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Health shall have access to any factory or establishment, the operator of which holds a permit from the Commis-

sioner of Health for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

**Poisonous or Deleterious Substance Added to Food;  
Regulation by Commissioner**

Sec. 13. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof, cannot be avoided by good manufacturing practice, or serves a useful purpose, shall be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a); but when such substance is so required, cannot be so avoided, or serves a useful purpose, the Commissioner of Health shall promulgate regulations limiting the quantity therein or thereon to such extent as the Commissioner of Health finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1), Section 10(a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the Commissioner of Health shall take into account the extent to which the use of such substance is required, cannot be avoided in the production of each such article, or serves a useful purpose, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**Adulterated Drug or Device**

Sec. 14. A drug or device shall be deemed to be adulterated

(a) (1) If it consists in whole or in part of any filthy, putrid, decomposed substance, or defective material; or (2) (A) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated, or whereby it may have been rendered injurious to health, or whereby it may have become or have been rendered incapable of, or unsuitable for, the purpose for which it was designed or intended; (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in

whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the Federal Act.<sup>1</sup>

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the Federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

(c) If it is not subject to the provision of paragraph (b) of this Section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor; provided, that this Subsection shall not apply to registered pharmacists compounding and dispensing physicians' prescriptions.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

**Misbranded Drug or Device**

Sec. 15. A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regula-

tions prescribed by the Commissioner of Health;

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the Commissioner of Health after investigation, found to be, and by regulations under this Act, designated as habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning: May be habit forming";

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosines, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemption shall be established by regulations promulgated by the Commissioner of Health;

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Commissioner of Health shall promulgate regulations exempting such drug or device from such requirements;

(g) If it purports to be a drug the name of which is recognized in the official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the Commissioner of Health. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;

(h) If it has been found by the Commissioner of Health to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Commissioner of Health shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Health shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

(i) (1) If it is a drug or device and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug or device; or (3) if it is offered for sale under the name of another drug or device;

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(k) (1) If it is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, pituitary, thyroid, or their derivatives; or (2) if it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian licensed to practice in this state; unless it is sold on a prescription by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the authorization of the prescribing physician, dentist or veterinarian. This Subsection shall not apply to a drug containing one or more of the derivatives of barbituric acid

and in addition a sufficient quantity or proportion of another drug or drugs to prevent the ingestion of a sufficient amount of barbituric derivative to cause an hypnotic or somnifacient effect.

#### Required Statement

Sec. 15A. A drug or device is misbranded if it is a drug or device which is required by Federal Law to bear the statement "Caution: Federal Law prohibits dispensing without prescription," and it does not bear the statement.

#### Sale or Gift of New Drug; Application; Test of Drug

Sec. 16. (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has been approved and said approval has not been withdrawn under Section 505 of the Federal Act,<sup>1</sup> or (2) when not subject to the Federal Act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner of Health an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the Commissioner of Health may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in Subsection (a)(2) shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner of Health finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner of Health.

(d) This section shall not apply—

(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the Commissioner of Health or pursuant to Section 505(i) or 507(d) of the Federal Act;<sup>2</sup> or

(2) to a drug sold in this state at any time prior to the enactment of this Act or

introduced into interstate commerce at any time prior to the enactment of the Federal Act; or

(3) to any drug which is licensed under the virus, serum, and toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, Chapter 6A, Sec. 262.)

(e) The provisions of Section 2(n) shall not apply to any drug which, on October 9, 1962, or on the date immediately preceding the enactment of this Subsection, (A) was commercially sold or used in this State or in the United States, (B) was not a new drug as defined by Section 2(n) as then in force, and (C) was not covered by an effective application under Section 16 of this Act or under Section 505 of the Federal Act, when such drug is intended solely for use under conditions prescribed, recommended or suggested in labeling with respect to such drug.

<sup>1</sup> 21 U.S.C.A. § 355.

<sup>2</sup> 21 U.S.C.A. § 355(i), 357(d).

#### Adulterated Cosmetic

Sec. 17. A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon;

"Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness";

and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one certified under authority of the Federal Act.



*Misbranded Cosmetic*

Sec. 18. A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner of Health;

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If its container is so made, formed, or filled as to be misleading.

*False Advertisement*

Sec. 19. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular;

(b) For the purpose of this Act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostrate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of Subsection (a) shall be deemed to be false under this Subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the Commissioner of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Commissioner of Health shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Commissioner of Health may

deem necessary in the interest of public health; provided, that this Subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

Regulations; Authority to Promulgate; Violation of Regulation; Hearings; Notice; Appeals; Action in District Court of Travis County

Sec. 20. (a) The authority to promulgate reasonable and necessary regulations, not inconsistent with any provision of this Act, for the efficient enforcement of this Act is hereby vested in the Commissioner of Health. The violation of a regulation promulgated under this Act shall be deemed to be a violation of this Act.

(b) Hearings authorized or required by this Act shall be conducted by the Commissioner of Health or such officer, agent, or employee as the Commissioner of Health may designate for the purpose.

(c) Before promulgating any regulations, the Commissioner of Health shall give thirty (30) days notice of the proposal and of the time and place for a hearing thereon by publishing such notice in a newspaper of general circulation within the state and the Commissioner of Health shall place any person, firm or corporation so desiring said notices on a state mailing list which said list shall entitle said holder to a copy of any notice of any regulation to be promulgated. To be entitled to receive such notices, said holder shall first pay in advance, an annual service charge to be determined by the Commissioner of Health, which same shall not be more than Five Dollars (\$5.00), except that the public hearing on regulations under Section 12 may be held at a time, to be fixed by the Commissioner of Health, after notice thereof. The regulation so promulgated shall become effective on a date fixed by the Commissioner of Health (which date shall not be prior to the ninetieth (90) day after its promulgation), except that if the Commissioner of Health finds that emergency conditions exist necessitating an earlier effective date, then the Commissioner of Health shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Commissioner of Health shall specify therein to meet the emergency. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the Commissioner of Health, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(c-1) In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto

shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstance shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, then in that event such appeals shall be as provided in Section 20(d) of this Act. It is specifically provided hereby that Section 20(d) of this Act shall not be operative unless and until the appeal as provided by Section 20(c-1) is held invalid, unconstitutional or inoperative.

(d) If any party at interest be dissatisfied with any act, order, ruling or decision of the Commissioner of Health in connection with the Administration of this Act, such party may file an action, naming the Commissioner of Health as defendant, in any of the district courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the Commissioner of Health or on file in his office while the matter was pending before him for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the Commissioner of Health. All acts, orders, rulings and decisions of the Commissioner of Health shall be final unless an action to set aside as herein authorized is filed within thirty (30) days after the action, order, ruling or decision is taken or made by the Commissioner of Health.

**Inspection by Commissioner of Factory, Warehouse,  
Establishment or Vehicle; Samples,  
Commissioner's Right to Obtain**

Sec. 21. The Commissioner of Health or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, stored or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

4 West's Tex. Stats. & Codes—29

(1) of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this Act are being violated, and to determine whether the record keeping provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code),<sup>1</sup> of the Texas Controlled Substances Act<sup>2</sup> or of the regulations of the director of the Department of Public Safety are being violated; and

(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such samples. It shall be the duty of the Commissioner of Health to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated. Whenever samples are secured by the Commissioner of Health or his agent, an equal amount of the product sampled, may upon request, be given to the person who has custody of the product sampled; payments shall be made only for that portion of the sample actually taken by the said Commissioner or agent.

<sup>1</sup> Transferred to Civil Statutes, Art. 4476-14.

<sup>2</sup> So in enrolled bill; should read "or".

<sup>3</sup> Article 4476-15.

**Publication of Reports Summarizing Judgments, Decrees  
and Court Orders; Dissemination of  
Information**

Sec. 22. (a) The Commissioner of Health may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Health may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the Commissioner of Health deems necessary in the interest of public health and the protection of the consumer against fraud.

**Federal Prosecutions as Bar to State Prosecutions;  
Abatement of Proceedings**

Sec. 22A. (a) Prosecution had or pending by the Federal Government, or any of its agents, involving the first processing of agricultural products, against any person subject to federal jurisdiction in such matters, for criminal or civil penalties, shall constitute complete defense against prosecution by the State of Texas, or any of its agencies, against such person for violation of any provision of this Act involving substantially the same facts and the same subject matter as involved in such federal proceedings, regardless of similarity or dissimilarity as between the sanctions and penalties of the federal and state statutes or regulations, and regardless of the result of such federal prosecution or procedure.

(b) Proceedings pending or in active preparation through which the Federal Government

seeks confiscation, destruction, decontamination, condemnation, or mutation of agricultural products subject to such federal controls or procedures and subject to controls established in this Act, upon appropriate pleading will serve as abatement of any proceedings or cause of action for the same purpose involving the same person, or persons, and the same subject matter that may be brought by the State of Texas, or any of its agencies, through court or administrative proceedings.

(c) Compliance in good faith by any person subject to federal jurisdiction in such matters, with orders, directives or judgments issued or secured by or at the instance of the Federal Drug Administration, or any other federal agency, in respect to the acquirement, use, or operation of any product, process, plant, device, or machinery, used or useful in the first processing of agricultural products, shall constitute a bar to any criminal, civil, or administrative procedure brought by or at the instance of the Commissioner of Health, or other state agency, under or by virtue of provisions of this Act, to the extent that such state procedure may duplicate, overlap, or conflict with such federal orders, directives, or judgment.

(d) The provisions of this Section shall apply only to the business activity of cotton seed crushing and processing and to only those persons who are engaged in interstate commerce and subject to both federal and state inspection. Provided further, that the provisions of this Section shall apply only to situations where there is a conflict in the federal and state laws.

Registration Statement of Wholesalers and Distributors; Contents; Fees; Revocation or Suspension of Registration

Sec. 23. 1. No person shall hereinafter engage or continue to engage in the wholesale drug business in this State without first filing a registration statement with the Commissioner of Health. For the purpose of this Act, the words "wholesale drug business" shall be defined as meaning persons engaged in the business of wholesale distribution of drugs and medicines bearing the legend "Caution: Federal law prohibits dispensing without prescription" or bearing the legend "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or prohibited from dispensing without a prescription by State law.

The words "wholesale distribution" shall be defined as meaning distribution to other than the consumer or patient and shall include distribution by manufacturers, re-packers, own label distributors, jobbers, and wholesalers.

2. The registration statement, which shall be signed and verified, shall be made on such forms as shall be furnished by the Commissioner of Health and shall provide the following information:

(a) The name under which the business is conducted.

(b) The address of each place of business in the State being registered.

(c) If proprietorship, the name and resident address of the proprietor; if a partnership, the names and resident addresses of all partners; if a corporation, the date and place of incorporation; or if any other type of association, then the names and addresses of the principals of such association.

(d) The names and resident addresses of those individuals in actual administrative capacity which, in the case of proprietorship, shall be the managing proprietor; partnership, the managing partner; corporation, the officers and directors; or those in a managerial capacity in any other type of association.

(e) For each place of business in the State, the resident address of the individuals in charge thereof.

3. The registration statement shall be filed within ninety (90) days after the effective date of this Act or prior to commencing business as a wholesale drug company and annually thereafter on or before the first day of September in each calendar year.

4. The initial and annual fee for registration which shall accompany the registration statement shall be Ten Dollars (\$10) for a single place of business and Five Dollars (\$5) for each additional place of business listed thereon.

5. In the event the location of a registered place of business shall be changed, the registrant shall notify the Commissioner of Health, in writing, of the address of such new location and the name and resident address of the individual in charge thereof. The fee to accompany such notification shall be Five Dollars (\$5) unless it shall appear to the satisfaction of the Commissioner of Health that the change of location is of a temporary nature due to fire, flood or other disaster.

6. The Commissioner of Health may, after notice and hearing, refuse to register or cancel, revoke or suspend the registration of any wholesale drug company for any of the following reasons:

(a) If the registrant has been convicted of a felony or misdemeanor which involves moral turpitude, or if the registrant be an association, partnership or corporation, that the managing officer has been convicted of a felony or misdemeanor which involves moral turpitude;

(b) That the registrant has been convicted in either a State or Federal court for the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the registrant be an associate, partnership, or corporation, that the managing officer has been convicted in either State or Fed-

eral court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(c) That based on evidence presented during a hearing it is determined that the applicant or registrant has sold counterfeit drugs and medicines, or has violated any of the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code),<sup>1</sup> of<sup>2</sup> the Texas Controlled Substances Act,<sup>3</sup> or of the regulations of the director of the Department of Public Safety, including any significant discrepancy in the records required to be maintained by State law.

7. Any registrant whose registration has been cancelled, revoked or suspended by the Commissioner of Health pursuant to the preceding Section shall have the right to appeal to a court of competent jurisdiction in his county of residence. Such appeal shall be de novo as appeals from justice courts to county courts, and the substantial evidence rule shall not apply.

8. Repealed by Acts 1969, 61st Leg., p. 2553, ch. 852, § 5, eff. Sept. 1, 1969.

9. Any person who engages or continues to engage in the wholesale drug business as defined in this Section who does not comply with the requirements of this Section by being registered with the Commissioner of Health shall be fined an amount not exceeding Three Thousand Dollars (\$3,000) or confined in jail for a period of not less than Thirty Days (30) nor more than two years (2) or by both such fine and imprisonment. For any second or subsequent violation of this Section, any person so violating the same shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years; provided that upon any second or subsequent conviction the benefits of the suspended sentence law shall not be available to a defendant convicted for such a violation of the provisions of this Section; provided further that any person convicted of any second or subsequent violation of this Section shall be entitled to the benefits of probation under the Adult Probation and Parole Law, as provided therein.

10. The fees provided for in Subsections 4 and 5 shall be deposited in the State Treasury to the Food and Drug Registration Fee General Revenue account and shall be available for carrying out the provisions of this Act.

[Acts 1961, 57th Leg., p. 823, ch. 373; Acts 1963, 58th Leg., p. 1176, ch. 461, § 1; Acts 1963, 58th Leg., p. 1260, ch. 484; Acts 1969, 61st Leg., pp. 2550 to 2553, ch. 852, §§ 1 to 7, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., pp. 1802, 1803, ch. 534, §§ 1 to 5, eff. June 1,

1971; Acts 1973, 63rd Leg., p. 1172, ch. 429, §§ 6.03 (j), 6.03(k), 6.03(l), eff. Aug. 27, 1973.]

<sup>1</sup> Transferred to Civil Statutes, Art. 4476-14.

<sup>2</sup> So in enrolled bill; should read "or".

<sup>3</sup> Article 4476-15.

## Art. 4476-6. Imported Fresh Meats

### Wholesale or Retail Sales

Sec. 1. No person shall knowingly sell at wholesale or retail any fresh meat imported from any foreign nation without complying with all of the rules prescribed by this Act.

### Definitions

Sec. 2. As used in this Act—

(a) "Fresh meat" means any quarter, half, or whole carcass of beef, pork, or mutton, or any cut or portion thereof which has not been canned, cooked, or otherwise processed.

(b) "Person" means any individual, firm, partnership, association, or corporation.

(c) "Retail store" means any retail grocery store, butcher shop, delicatessen, or other place where fresh meat is sold at retail for consumption off-premises.

(d) "Ground meat" includes any meat subsequently ground or commingled and any portion of which is imported from a foreign nation.

### Labels, Brands or Signs; Contents

Sec. 3. (a) On each quarter, half, or whole carcass of imported fresh meat offered for sale at wholesale or retail, and also on any individually wrapped or packaged cut or portion thereof, there shall be placed a label or brand bearing the words "Product of \_\_\_\_\_" (naming the country), or other words clearly indicating the country of origin of the meat. Where unwrapped or unpackaged cuts or slices are displayed in a tray or case for selection by the patron, each tray or case shall have a conspicuous, legible, and clearly visible sign or label bearing such an inscription. Every tray or other container of hamburger, ground meat, sausage, or other fresh meat displayed in the bulk shall have a sign or label conforming to the same requirements.

### Violations; Penalties

Sec. 4. (a) Any person who knowingly violates any provision of this Act shall, for the first offense, be fined not less than \$25 nor more than \$200.

(b) For a second or subsequent violation of this Act, a person shall be fined not less than \$100 nor more than \$500, or confined in the county jail for not less than 30 days nor more than 90 days, or both.

(c) The State Department of Public Health shall enforce the provisions of this Act and shall file a sworn complaint against any person who violates the provisions of this Act.

[Acts 1965, 59th Leg., p. 88, ch. 32.]

**Art. 4476-7. Texas Meat and Poultry Inspection Act**

**TITLE I-INSPECTION REQUIREMENTS:  
ADULTERATION AND MISBRANDING**

Sec. 1. As used in this Act, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "commissioner" means the State Commissioner of Health.

(b) The term "firm" means any partnership, association, or unincorporated business organization.

(c) The term "meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(d) The term "renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, except rendering conducted under inspection under Title I of this Act.

(e) The term "animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds.

(f) The term "intrastate commerce" means commerce within this state.

(g) The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds.

(h) The term "capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or it is naturally inedible by humans.

(i) The term "prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or otherwise manufactured or processed.

(j) The term "adulterated" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2) (A) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the commissioner make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act;<sup>1</sup>

(C) if it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;<sup>2</sup>

(D) if it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act;<sup>3</sup> provided, That an article which is not adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the commissioner in establishments at which inspection is maintained under Title I of this Act;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(9) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(k) The term "misbranded" shall apply to any livestock product or poultry product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

(2) if it is offered for sale under the name of another food;

(3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) if its container is so made, formed, or filled as to be misleading;

(5) unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this subparagraph (5), exemptions as to livestock products not in containers may be established by regulations prescribed by the commissioner; and provided further, that under clause (B) of this subparagraph (5), reasonable

variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the commissioner;

(6) if any word, statement, or other information required by or under authority of this Act to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the commissioner under Section 7 of this Act unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the commissioner under Section 7 of this Act, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the commissioner, be designated as spices, flavorings, and colorings without naming each: provided, that, to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner;

(10) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner, after consultation with the Secre-

tary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: provided, that, to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the commissioner; or

(12) if it fails to bear, directly thereon and on its container, as the commissioner may by regulations prescribe, the inspection legend and establishment number of the establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the commissioner may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(l) The term "label" means a display of written, printed, or graphic matter upon the immediate container or product (not including package liners) of any article.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such articles.

(n) The term "Federal Meat Inspection Act" means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).<sup>4</sup>

(o) The term "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.<sup>5</sup>

(p) The term "pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Act as under the Federal Food, Drug, and Cosmetic Act.

(q) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the commissioner to identify the status of any article or animal under this Act.

(r) The term "official inspection legend" means any symbol prescribed by regulations of the commissioner showing that an article was inspected and passed in accordance with this Act.

(s) The term "official certificate" means any certificate prescribed by regulations of the commissioner for issuance by an inspector or other person performing official functions under this Act.

(t) The term "official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(u) The term "inspector" means an employee of the State Department of Health who shall be under the supervision of the chief officer in charge of inspection. The chief officer in charge of inspection shall be a veterinarian designated by the commissioner as responsible for animal health as animal health is related to public health, and shall be directly responsible to the commissioner. He shall be licensed to practice veterinary medicine in this state or eligible to be licensed to practice in this state and, if the latter should be the case, he must secure a Texas license within two years from the time of his employment in this position.

(v) The term "poultry" means any domesticated bird, whether live or dead.

(w) The term "poultry product" means any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the commissioner from definition as a poultry product under such conditions as it may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(x) The term "official establishment" means any establishment as determined by the commissioner at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this Act.

(y) The term "inedible animal product" means any product which is made wholly or in part from carcasses, or parts of products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, or domesticated game birds, but which is not a "meat food product" as defined in Section 1(g) of this Act.

<sup>1</sup> 21 U.S.C.A. § 346a.

<sup>2</sup> 21 U.S.C.A. § 348.

<sup>3</sup> 21 U.S.C.A. § 376.

<sup>4</sup> 21 U.S.C.A. § 601 et seq.

<sup>5</sup> 21 U.S.C.A. § 301 et seq.

Sec. 2. Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that

the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the State Commissioner of Health and cooperation by this state and the United States as contemplated by this Act are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Act.

Sec. 3. For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this state in which slaughtering and preparation of meat and meat food products of such animals are conducted solely for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the commissioner as herein provided for.

Sec. 4. For the purposes hereinbefore set forth the commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this state in which such articles are prepared solely for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or la-

beled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned" all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the commissioner may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the commissioner may remove inspectors from any establishment which fails to do so destroy any such condemned carcass or part thereof.

Sec. 4a. (1) Whenever, in his judgment, the commissioner determines that it is in the best interest of public health that investigations be made of disease findings by inspectors operating under the provisions of Sections 3 and 4 of this Act, the commissioner shall have the authority to cause such investigations to be made.

(2) Whenever any disease condition is found in the course of inspection provided for in this Act, which is inimical to public health, the commissioner shall have the authority to quarantine any premise or premises determined to be harboring any animal afflicted with any stage of the disease which may be transmitted to man or animals. Quarantined animals may be removed from quarantined areas only upon permission and supervision by the commissioner.

Sec. 5. The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this title is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The commissioner may limit the entry of carcasses, parts of carcasses, meat and meat food products, and other materials into any establishment at which



inspection under this title is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Act.

Sec. 6. For the purposes hereinbefore set forth the commissioner shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared solely for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall cause to be marked, stamped, tagged, or labeled as "Texas inspected and passed" all such products found to be not adulterated; and said inspectors shall cause to be labeled, marked, stamped, or tagged as "Texas inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the commissioner may remove inspectors from any establishment which fails to so destroy such condemned meat food products.

Sec. 7. (a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "Texas inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Act is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Texas inspected and passed" under the provisions of this Act, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Act is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat, and meat food products inspected at any establishment under the authority of this Act and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the commissioner may require, the information required under paragraph (k) of Section 1 of this Act.

(c) The commissioner, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) the styles and sizes of type to be used with respect

to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this title or Title II of this Act; (2) definitions and standards of identity or composition for articles subject to this title and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act,<sup>1</sup> or under the Federal Meat Inspection Act,<sup>2</sup> or under the Federal Poultry Products Inspection Act,<sup>3</sup> and there shall be consultation between the commissioner and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the commissioner are permitted.

(e) If the commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as it may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling, or container does not accept the determination of the commissioner, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the commissioner so directs, be withheld pending hearing and final determination by the commissioner. Any such determination by the commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the district court.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

<sup>2</sup> 21 U.S.C.A. § 601 et seq.

<sup>3</sup> 21 U.S.C.A. § 451 et seq.

Sec. 8. The commissioner shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds are slaughtered and the meat and meat food products thereof are prepared solely for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adul-

terated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "Texas inspected and passed."

Sec. 9. The commissioner shall cause an examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of intrastate commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or the preparation of said food products is conducted during the nighttime. Provided that the commissioner, when he determines that operating hours of any person, firm, or corporation, are set in a capricious or at unnecessarily difficult times, shall have the authority to set the time and duration of operations of the said person, firm, or corporation.

Sec. 10. No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any carcasses, parts of carcasses, meat, or meat food products of any such animals:

(a) slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this Act;

(b) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce (1) any such articles which (A) are capable of use as human food, and (B) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (2) any articles required to be inspected under this title unless they have been so inspected and passed;

(c) do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded;

(d) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the commissioner, except as may be authorized by regulations of the commissioner.

Sec. 11. (a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the commissioner.

(b) No person, firm, or corporation shall:

(1) forge any official device, mark, or certificate;

(2) without authorization from the commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) contrary to the regulations prescribed by the commissioner, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) knowingly possess, without promptly notifying the commissioner or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the commissioner; or

(6) knowingly represent that any article has been inspected and passed, or exempted, under this Act when, in fact, it has, respectively, not been so inspected and passed, or exempted.

Sec. 12. No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the commissioner to show the kinds of animals from which they were derived. When required by the commissioner with respect to establishments at which inspection is maintained under this title, such animals and their carcasses, parts thereof, meat, and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds are slaughtered or their carcasses, parts thereof, meat, or meat food products are prepared.

Sec. 13. The commissioner shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all

meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to cause to be stamped, marked, tagged or labeled any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this Act and by the rules and regulations to be prescribed by said commissioner; and said commissioner shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this Act, and all inspections and examinations made under this Act shall be such and made in such manner as described in the rules and regulations prescribed by said commissioner not inconsistent with the provisions of this Act. The commissioner shall adopt and use federal rules and regulations, as amended, and federal procedures, as amended, for meat inspection and/or poultry inspection wherever these said rules, regulations, and procedures are applicable.

Sec. 14. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector, or any other officer or employee authorized to perform any of the duties prescribed by this Act or by the rules and regulations of the commissioner of health, any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector, or other officer or employee in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than \$500 nor more than \$10,000 and/or by imprisonment not less than one year nor more than three years; and any inspector, deputy inspector, chief inspector, or other officer or employee authorized to perform any of the duties prescribed by this Act who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$100 nor more than \$10,000 and/or by imprisonment not less than one year nor more than three years.

Sec. 15. The provisions of this title requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat, and meat food products at establishments conducting such operations shall not apply to the slaughtering on his own premises, by any person, of animals, and the preparation by him

and transportation in intrastate commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees. The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section.

Sec. 16. The commissioner may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

#### TITLE II—MEAT PROCESSORS AND RELATED INDUSTRIES

Sec. 201. Inspection shall not be provided under Title I of this Act at any establishment for the slaughter of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the commissioner to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat, or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the commissioner or are naturally inedible by humans.

Sec. 202. (a) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the commissioner afford such representative and any duly authorized representative of the Secretary of Agriculture of the United States accompanied by such representative of the commissioner access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any persons, firms, or corporations that engage, for intrastate commerce, in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, poultry, domestic rabbits, and domesticated game birds, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(2) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for such commerce, any carcasses, or parts or products of carcasses, of any such animals;

(3) Any persons, firms, or corporations that engage in business, in or for intrastate commerce, as renderers, or engage in the business of buying, selling, or transporting, in such commerce, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, poultry, domestic rabbits, and domesticated game birds, or parts of the carcasses of any such animals that died otherwise than by slaughter.

(b) Any record required to be maintained by this section shall be maintained for such period of time as the commissioner may by regulations prescribe.

Sec. 203. No person, firm, or corporation shall engage in business, in or for intrastate commerce, as a meat broker or renderer, or animal food manufacturer, or engage in business in such commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for such commerce, or engage in the business of buying, selling, or transporting in such commerce, any dead, dying, disabled, or diseased animals of the specified kinds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless, when required by regulations of the commissioner he has registered with the commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

Sec. 204. No person, firm, or corporation engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or received for transportation, in such commerce, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated

game birds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the commissioner may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

Sec. 205. No person, firm, or corporation that engages in business in or for intrastate commerce or engages in the business of buying, selling, or transporting in such commerce shall offer for sale, except for further sterilization processing, any inedible animal products unless such products have been processed in such manner to prevent the survival of disease-producing organisms or deleterious substances in the material processed.

#### TITLE III—FEDERAL AND STATE COOPERATION

Sec. 301. (a) The Texas State Department of Health is hereby designated as the state agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of Section 301 of the Federal Meat Inspection Act<sup>1</sup> and Section 5 of the Federal Poultry Products Inspection Act,<sup>2</sup> and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat and poultry inspection program of this state under this Act to assure that not later than the respective dates prescribed by federal law, the requirements will be at least equal to those imposed under Titles I and IV of the Federal Meat Inspection Act<sup>3</sup> and under Sections 1-4, 6-10, and 12-22 of the Federal Poultry Products Inspection Act,<sup>4</sup> and in developing and administering the program of this state under Title II of this Act in such a manner as will effectuate the purposes of this Act and said Federal Acts.

(b) In such cooperative efforts, the commissioner is authorized to accept from said secretary advisory assistance in planning and otherwise developing the state program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The commissioner is further authorized to spend public funds of this state appropriated for administration of this Act to pay 50 per centum of the estimated total cost of the cooperative program.

(c) The commissioner is further authorized to recommend to the said secretary of agriculture such officials or employees of this state as the commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act and Section 5 of the Federal Poultry Products Inspection Act, and the commissioner shall serve as the representative of the governor for consultation with said secretary under

said Acts unless the governor shall select another representative.

<sup>1</sup> 21 U.S.C.A. § 661.

<sup>2</sup> 21 U.S.C.A. § 454.

<sup>3</sup> 21 U.S.C.A. §§ 601 et seq., 671 et seq.

<sup>4</sup> 21 U.S.C.A. § 451 et seq.

#### TITLE IV-AUXILIARY PROVISIONS

Sec. 401. (a) The commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Act) refuse to provide, or withdraw, inspection service under Title I of this Act with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Title I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this Act for withdrawal of inspection services under Title I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat, or meat food products.

(b) For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the appropriate court as provided in Section 404. Judicial review of any such order shall be upon the record upon which the determination and order are based.

Sec. 402. Whenever any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, equine, poultry, domestic rabbits, and domesticated game birds is found by any authorized representative of the commissioner upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Title I of this Act or the Federal Meat Inspection Act<sup>1</sup> or the Federal Food, Drug, and Cosmetic Act,<sup>2</sup> or the

Federal Poultry Products Inspection Act,<sup>3</sup> or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under Section 403 of this Act or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place, at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the commissioner that the article or animal is eligible to retain such marks.

<sup>1</sup> 21 U.S.C.A. § 601 et seq.

<sup>2</sup> 21 U.S.C.A. § 301 et seq.

<sup>3</sup> 21 U.S.C.A. § 451 et seq.

Sec. 403. (a) Any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, equine, poultry, domestic rabbits, or domesticated game birds, that is being transported in intrastate commerce, or is held for sale in this state after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Act, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this Act, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any proper court as provided in Section 404 of this Act within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the treasury of this state, but the article or animals shall not be sold contrary to the provisions of this Act, or the Federal Meat Inspection Act,<sup>1</sup> or the Federal Poultry Products Inspection Act,<sup>2</sup> or the Federal Food, Drug, and Cosmetic Act;<sup>3</sup> provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the commissioner of health as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such libel cases shall conform, as

nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of this state.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Act, or other laws.

<sup>1</sup> 21 U.S.C.A. § 601 et seq.

<sup>2</sup> 21 U.S.C.A. § 451 et seq.

<sup>3</sup> 21 U.S.C.A. § 301 et seq.

Sec. 404. The district court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Act, and shall have jurisdiction in all other kinds of cases arising under this Act (except as provided in Section 7(e) of this Act).

Sec. 405. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not less than \$25 nor more than \$1,000 or confined in the county jail for not less than 30 days nor more than two years, or both. Whoever, in the commission of any such acts, uses a weapon prohibited by Article 483, Penal Code of Texas, 1925, as amended, shall be fined not less than \$200 nor more than \$5,000 or confined in the county jail for not less than 90 days nor more than two years, or both; or shall be imprisoned in the penitentiary for not more than five years. Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under the Texas Penal Code.

Sec. 406. (a) Any person, firm, or corporation who violates any provision of this Act for which no other criminal penalty is provided by this Act shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in Section 1(j)(8) of this Act), such person, firm, or corporation shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000 or both; provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this Act if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the commission the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this Act shall be construed as requiring the commissioner to report for prosecution or for the institution of libel or injunction proceedings, minor violations of this Act whenever he believes that the public inter-

est will be adequately served by a suitable written notice of warning.

Sec. 407. (a) The commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, and corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the commissioner, in such form as the commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commissioner may prescribe, and shall be filed with the commissioner within such reasonable period as the commissioner may prescribe, unless additional time be granted in any case by the commissioner.

(b) (1) For the purposes of this Act the commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing in any county in which the witness resides, is employed, or has a place of business. In case of disobedience to a subpoena the commissioner may invoke the aid of the district court in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) The district court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation to appear before the commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the attorney general of this state at the request of the commissioner, the district court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this Act or any order of the commissioner made in pursuance thereof.

(5) The commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commissioner as hereinbefore provided.

(6) Witnesses summoned before the commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the commissioner or in obedience to the subpoena of the commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) (1) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the commissioner shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Any person, firm, or corporation that shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or that shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by a person, firm, or corporation subject to this Act or that shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall wilfully remove out of the jurisdiction of this state, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall wilfully refuse to submit to the commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

(3) If any person, firm, or corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this state the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the treasury of this state, and shall be recoverable in a civil suit in the name of the state brought in the district court of the county where the person, firm, or corporation has his or its principal office or where he or it shall do business. It shall be the duty of the various district attorneys, under the direction of the attorney general of this state, to prosecute for the recovery of such forfeitures.

(4) Any officer or employee of this state who shall make public any information obtained by the commissioner, except with the approval of the commissioner, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Sec. 408. The commissioner shall designate at least one state inspector for each state representative district.

Sec. 409. The requirements of this Act shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act<sup>1</sup> or the Federal Poultry Products Inspection Act<sup>2</sup> only to the extent provided for in said Federal Acts and any future amendments thereto.

<sup>1</sup> 21 U.S.C.A. § 601 et seq.

<sup>2</sup> 21 U.S.C.A. § 451 et seq.

Sec. 410. This Act shall be administered and enforced with funds provided by the General Appropriations Act and the Department of Health is authorized to collect fees for overtime and special services rendered to establishments, and to expend same as provided by the General Appropriations Act.

Sec. 411. This Act shall be designated as the Texas Meat and Poultry Inspection Act.

Sec. 412. Chapter 339, Acts of the 49th Legislature, 1945, as amended by Chapter 32, Acts of the 55th Legislature, Regular Session, 1957 (Article 4476-3, Vernon's Texas Civil Statutes), is repealed.

Sec. 413. This Act prevails over the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) and any other Act to the extent of any conflict.

Sec. 414. If any provision of this Act or the application thereof to any person, firm, or corporation or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons, firms, and corporations and circumstances shall not be affected thereby.

[Acts 1969, 61st Leg., p. 337, ch. 123, eff. Sept. 1, 1969.]

#### Art. 4476-8. Crab Meat; Processing, Transportation and Sale; Regulation and Licensing

##### Definitions

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

(1) "crab meat" means the edible meat of steamed or cooked crabs, without other processing than picking, packing, and chilling;

(2) "picking plant" means any place where crabs are steamed or cooked and edible meat is picked therefrom;

(3) "pasteurization plant" means a plant where crab meat is heat-treated, without complete sterilization, to improve the keeping qualities of the meat;

(4) "person" means any individual, partnership, corporation or association;

(5) "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article;

(6) "labeling" means all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying such article; and

(7) "department" means the State Department of Health.

##### Rules and Regulations

Sec. 2. The department shall make and promulgate rules and regulations for the picking, pasteurizing, storing, transporting, and selling of crab meat. The department may revoke or amend the rules and regulations when in its

judgment alteration is necessary to insure a wholesome product.

##### Required Compliance with Act

Sec. 3. No person may engage in any business for which a license is required under this Act, without first complying with the provisions of this Act.

##### Licenses

Sec. 4. Every person operating a crab-meat picking or pasteurization plant in this state must obtain a license for each plant. All licenses must be obtained at the time and in the manner set forth in Section 5. The department shall issue serially numbered licenses to persons who operate plants which conform to the requirements of this Act and the rules and regulations of the department.

##### Application for Licenses; Fees

Sec. 5. (a) All persons operating on the effective date of this Act a business required to be licensed under the provisions of this Act shall apply for a license immediately after the effective date of this Act, and they may continue in business unless and until the application is rejected by the department.

(b) All persons who, after the effective date of this Act, desire to operate a business required to be licensed under the provisions of this Act, shall apply for and obtain a license before commencing operations.

##### Inspection

Sec. 6. When an application has been properly filed with the department, the department shall inspect all properties identified in the application, all buildings and equipment thereon, and the operating procedures under which the product is processed. If the property, building, equipment, and operating procedures are found to conform to the regulations of the department, a separate license for each property so approved shall be issued to the applicant. The license is nontransferable and expires on the last day of August of each year. A new license must be applied for each year.

##### Revocation of License

Sec. 7. Whenever the department finds that any provision of this Act has been violated by the holder of a license issued by the department, or that a violation has occurred or is occurring on any premises for which a license has been issued, the department shall give notice to the licensee in writing, setting forth the nature of the violation, and directing that the violation cease. If the licensee refuses or fails to comply with the notice in the time and manner set forth in the notice, the department may revoke the license. Before revoking a license the department shall give written notice to the licensee stating that it contemplates the revocation of the license and giving its reasons for that action. The notice shall set a time for a hearing, and shall be mailed by registered or certified mail to the licensee. On the day of hearing, the licensee may present such evi-



dence to the department as he deems fit, and after hearing all the testimony, the department shall decide the question in such a manner as to it appears just and right.

**Appeals from Board Order**

Sec. 8. Any applicant for a license, or any licensee who feels aggrieved by the action of the department in failing to issue or in revoking a license, may appeal that action to a district court in the county in which the property identified by the application or license is located, or to a district court of Travis County, Texas.

**Adulterated Crab Meat**

Sec. 9. Crab meat is adulterated if

- (1) any substance has been substituted wholly or in part for the crab meat;
- (2) the crab meat consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is for any other reason unsound, unwholesome, unhealthful or otherwise unfit for human consumption;
- (3) the crab meat has been prepared, packed, or held under insanitary conditions which, in the judgment of the department may have contaminated the crab meat with filth, or may have rendered it injurious to health; or
- (4) the crab meat container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

**Possession of Adulterated Crab Meat**

Sec. 10. (a) No person may process, transport, store for sale, have in possession with intent to sell, offer or expose for sale, or sell any crab meat for human consumption which is adulterated, or which was packed or pasteurized in violation of any of the provisions of this Act or the rules and regulations of the department issued under this Act.

(b) The possession of adulterated crab meat by any person holding a license under this Act is presumptive evidence of intent to sell the crab meat for human consumption.

**Labeling and Marking Packages**

Sec. 11. (a) All packages of crab meat shall be conspicuously labeled or marked in a manner approved by the department. Stamping with ink may not be permitted.

(b) The label or marking shall contain:

- (1) the proper designation of the content of the package;
- (2) the name and address of the picking plant in which the product was produced or the name and address of the distributor; (where the name and address of the distributor is used, it shall be preceded by the words "packed for" or "distributed by" followed by the word "distributor,");
- (3) the presence of any chemical if any is allowed;

(4) the license number of the picking plant preceded by the state abbreviation on the body of the can plainly and conspicuously marked;

(5) the net weight of the contents; and

(6) such other matter pertinent to the public health as may be required by the department.

(c) No label may bear any false or misleading statement.

**Compliance with Standards Required; Seizure of Nonconforming Crab Meat**

Sec. 12. Any crab meat, whether it comes from the State of Texas or from plants outside of this state, shall comply with the standards of the department as provided by this Act. Crab meat which does not comply with these standards may be seized and condemned by the department.

**Penalty**

Sec. 13. (a) A person who violates any provisions of this Act, or any rule or regulation issued pursuant to this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 and not more than \$200 for each offense; each violation constitutes a separate offense.

(b) A repetition of or continuance of an offense may be enjoined by appropriate proceedings in the district courts of this state. The district attorney or county attorney, upon application by the health authority, shall prosecute in the court having jurisdiction of the offense a person charged with the violation of any of the provisions of this Act or the rules and regulations issued by the department, and where appropriate, shall institute proceedings in the district court to enjoin further such violations.

**Duties of Commissioner of Health**

Sec. 14. The commissioner of health shall exercise the powers and duties conferred on the State Department of Health by this Act. The commissioner may delegate any of these powers and duties to an employee of the department who shall act as his representative. [Acts 1969, 61st Leg., p. 693, ch. 237, eff. May 21, 1969.]

**Art. 4476-9. Sterilization of Dishes; Broken or Cracked Dishes and Unlaundered Napkins**

**Definitions**

Sec. 1. As used in this Act, unless the context otherwise indicates:

- (a) The term "Person" includes individual, partnership, corporation, and association.
- (b) The term "Dish" includes all vessels of any shape or size, constructed of any material whatsoever, commonly used in eating or drinking.
- (c) The term "Utensil" includes all vessels of any shape or size, constructed of

any material, commonly used in preparing, holding, storing, or transporting food, and all articles, of whatsoever construction, size, or shape, used in serving or eating food.

(d) The term "Liquor Dispensary" includes all places where beers, ales, wines, or any other alcoholic beverages are stored, prepared, labeled, bottled, or served, or otherwise handled.

(e) The term "Receptacle" includes all vessels, trays, pots, pans, or other articles used for holding food.

(f) The term "Factory" includes all places in which is carried on the business of manufacturing or preparing food for human consumption.

#### Sterilization of Dishes, Receptacles, or Utensils

Sec. 2. No person, firm, corporation, or association operating, managing, or conducting any hotel, cafe, restaurant, dining car, drug store, soda water fountain, meat market, bakery, or confectionary, liquor dispensary, or any other establishment where food or drink of any kind is served or permitted to be served to the public shall furnish to any person any dish, receptacle, or utensil used in eating, drinking, or conveying food if such dish, receptacle, or utensil has not been washed after each service until clean to the sight and touch in warm water containing soap or alkali cleanser. After cleaning, all glasses, dishes, silverware, and other receptacles and utensils shall be (a) placed in wire cages and immersed in a still bath of clear water heated to a minimum temperature of 170° F for at least three (3) minutes, or two (2) minutes at 180° F; or (b) immersed for at least two (2) minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if hypochlorites are used, or a concentration of equal bacteriacidal strength if chloramines are used; provided, however, the bath shall be made up at a strength of 100 ppm or more of hypochlorites and shall not be used after its strength has been reduced to 50 ppm; or (c) sterilized by any other chemical method approved by the State Health Officer.

Chlorine solutions once used shall not be reused for bacteriacidal treatment on any succeeding day.

Where chlorine treatment is used, a three-compartment vat shall be required, the first compartment to be used for washing, the second for plain rinsing, and the third for chlorine immersion; provided that for existing installations the second or rinsing compartment may be omitted if a satisfactory rinsing or spraying device is substituted. Upon removal from the hot water or chlorine solution, all glasses, dishes, silverware, and other receptacles and utensils shall be stored in such a manner as not to become contaminated. When paper receptacles, ice cream cones, or other single service utensils are used for serving food or drinks, they must be kept in a sanitary man-

ner, protected from dust, flies and other contamination. Provided that the provisions of this Section shall not apply to such establishments as described herein which use electrically operated dishwashing and glasswashing machines that accomplish these purposes mechanically.

#### Broken or Cracked Dishes, Receptacles, and Utensils

Sec. 3. No dish, receptacle, or utensil shall be used or kept for use by any public eating or drinking establishment, or any factory, to hold or convey food intended for human consumption if said dish, receptacle, or utensil is chipped, cracked, or broken, or constructed in such a manner as to render its cleansing and/or sterilization impossible or doubtful.

#### Clean Napkins

Sec. 4. (a) No napkin, or cloth, or other article that has been used, shall be furnished any person until said napkin, cloth, or other article shall have been laundered or sterilized, subsequent to any other use.

(b) No napkins, straws, toothpicks, or any other articles shall be offered for the use of any person if said napkins, straws, toothpicks, or other articles have not been securely protected from dust, dirt, insects, rodents, and, as far as may be necessary, by all reasonable means, from all contaminations.

#### Dishes, Receptacles, and Utensils in Food Factories

Sec. 5. No person, firm, corporation, or association operating, managing, or conducting any food factory or place where food is manufactured shall use or keep for use any dish, utensil, ladle, or other instrument, or any food grinding machine or implement that has not been washed and sterilized, as provided in the preceding Section of this Act for dishes and other articles before each use, or keep for use, or use any dish, utensil, or other article for food that is cracked, broken, chipped, or otherwise damaged in a manner to render proper cleaning or sterilizing doubtful or impossible.

#### Poisonous Cleaners and Polishes

Sec. 6. No dish, utensil, or instrument used in eating or drinking shall be offered for use to any person, or used in the manufacturing of food, if said dish, utensil, or instrument has been cleaned or polished by means of any cyanide or other poisonous substance. This provision shall not apply to any dish, utensil, or instrument if said dish, utensil, or instrument has been subsequently cleaned in a manner that all traces of said poisonous substance shall have been removed.

#### Penalty

Sec. 7. Whoever shall do any act or thing prohibited, or neglect or refuse to do any act or thing required by the preceding Sections of this Chapter, or in any way violate any provisions thereof, shall be fined any amount not less than Five Dollars (\$5) nor more than One Hundred Dollars (\$100).

**Repealer**

Sec. 8. Article 700a, Title 12, Chapter 1, Revised Criminal Statutes of the State of Texas, and all other laws and parts of laws in conflict with this Act are hereby repealed.

**Severability**

Sec. 9. If any sentence, phrase, clause, subsection, or section of this Act is declared unconstitutional or inoperative, it shall not affect the validity or effect of any other portion of the Act.

[Acts 1939, 46th Leg., p. 234; Acts 1947, 50th Leg., p. 564, ch. 328, § 1; Acts 1951, 52nd Leg., p. 647, ch. 378, § 1.]

**Art. 4476-10. Sanitary Employees Where Food or Drink is Handled**

**Employment of Infected Persons**

Sec. 1. No person, firm, corporation, or organization operating or managing any public eating place or any place where food or drink is manufactured, processed, prepared, dispensed, or otherwise handled in such manner or under such circumstances as would permit probable transmission of disease from any handler thereof to the consumer, shall employ or work any person to handle such products or utensils, dishes, or serving implements used in connection therewith, who is infected with any transmissible condition of any disease known to be normally communicable through the handling of food or drink.

**Employment Of or Handling Of Food or Drink, Dishes, Serving Implements, Etc., by Infected Persons**

Sec. 2. No person infected with a disease, the condition of which is transmissible to another through the handling of food or drink or who resides in a household with a transmissible case of a communicable disease which may be food-borne, or who is known to be a carrier of the organisms causing such disease, and no person having a local infection transmissible through food or drink shall be employed at any place or vehicle in which food or drink is manufactured, processed, prepared, or dispensed; nor shall any such person at any time handle any food or drink or utensils, dishes, or serving implements used in connection therewith, which may be, directly or indirectly, for public sale or offered for the use or consumption of another.

**Physical Examination; Certificate of Physician**

Sec. 3. All such persons and employees employed or seeking employment in any of the capacities herein above set forth shall, upon the request of any employer, or any legally appointed State or local Health Officer or of their duly authorized representative, secure an adequate examination of themselves by a licensed physician and secure in evidence thereof a certificate signed by such physician stating that such examination had been made and that to the best of his or her knowledge, the person examined was found, on that date, to be free of any transmissible condition of any disease or local infection commonly transmitted

through the handling of food or drink. Such examinations shall be actual and thorough and conducted within the framework of practical scientific procedures for the determination of the existence of communicable disease which may be transmissible through the handling of foods.

**Personal Cleanliness Required of Food or Drink Handlers; Clothing; Towels**

Sec. 4. Every person engaged in the handling of food, drink, or unsealed containers therefor, shall maintain personal cleanliness, shall wear clean outer garments, shall keep his hands clean at all times, and shall thoroughly wash the hands with soap and water after each visit to the toilet. The use (in, on, or about any place where food or drink for public consumption is handled or sold) by two (2) or more persons, of any towel before it is thoroughly laundered is hereby declared to be an unsanitary practice and shall constitute a violation of this Act.

**Food Defined**

Sec. 5. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery, and condiment, whether simple, mixed, or compounded.

**Ordinances**

Sec. 6. The provisions of this Act shall in no way affect the authority of any incorporated city (including home rule cities) to enact ordinances pertaining to the matters herein referred to, and shall in no way affect the authority to enact ordinances as granted to them under Article XI, Section V of the State Constitution, or Articles 1015, 1175 or 1176 of the Revised Civil Statutes of Texas of 1925.

**Penalty**

Sec. 7. Any person, firm, corporation, or organization who shall violate any of the provisions of this Act shall be fined not less than Ten Dollars (\$10) and not more than Two Hundred Dollars (\$200) and each day of such violation shall constitute a separate offense.

**Partial Invalidity**

Sec. 8. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**Repeal of Conflicting Laws**

Sec. 9. Chapter 356, Acts of the Forty-sixth Legislature, Regular Session, 1939<sup>1</sup> (codified as Article 705c in Vernon's Texas Penal Code) and all amendments thereto are hereby repealed; and all other laws or parts of laws in conflict herewith are hereby repealed. But nothing in this Act shall be construed to preclude the prosecution of any person, firm, corporation, common carrier or association for acts or omissions in violation of any of the

provisions repealed by this section where such acts or omissions take place prior to the time of repeal of such provision by this section.

[Acts 1955, 54th Leg., p. 598, ch. 204.]

<sup>1</sup> So in enrolled bill; should read "Forty-fifth Legislature, Regular Session, 1937".

**Art. 4476-11. Drug Treatment Programs; Use of Synthetic Narcotics; Advisory Committee; Rules and Regulations**

**Permit for Use of Synthetic Narcotic Drugs**

Sec. 1. One hundred twenty days after the effective date of this Act it shall be unlawful to prescribe or administer synthetic narcotic drugs to any person for the purpose of treating drug dependency without a permit issued by the Texas State Department of Health.

**Rules and Regulations; Advisory Committee; Members, Terms; Meetings; Compensation**

Sec. 2. (a) The Texas State Department of Health, hereinafter designated as "the department," shall establish, administer, and enforce such rules, regulations, and standards as it deems necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons. To advise the department in the establishment, administration, and enforcement of such rules, regulations, and standards, an advisory committee shall be appointed as follows:

(1) One physician licensed to practice medicine in the State of Texas particularly informed about the problems arising from drug addiction shall be appointed by the Texas State Board of Medical Examiners.

(2) One pharmacist licensed to practice pharmacy in the State of Texas shall be appointed by the Texas State Board of Pharmacy.

(3) One attorney licensed to practice law in the State of Texas shall be appointed by the President of the State Bar of Texas.

(4) One law-enforcement officer shall be appointed by the Director of the Department of Public Safety of the State of Texas.

(5) One stabilized addict shall be appointed by the Commissioner of Mental Health and Mental Retardation.

(6) One social worker with particular experience in the treatment of narcotics addiction shall be appointed by the Commissioner of Mental Health and Mental Retardation.

(7) The Commissioner of Health shall appoint one officer or employee of his department.

(8) The Director of the Texas Department of Corrections shall appoint one officer or employee of his department.

(9) The Commissioner of the Texas Rehabilitation Commission shall appoint one officer or employee of the commission.

(10) The Commissioner of Mental Health and Mental Retardation shall serve as a permanent member of this advisory committee in the capacity of chairman.

(b) The initial appointments to this advisory committee pursuant to subparagraphs (1), (2), and (3) of Subsection (a) of this section shall serve for a period of two years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (4), (5) and (6) of Subsection (a) of this section shall serve for a period of four years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (7), (8), and (9) of Subsection (a) of this section shall serve for a period of six years and until their successors are appointed. Each subsequent appointee to this advisory committee shall serve for a term of six years and until his successor is appointed.

(c) This advisory committee shall meet at least twice a year or at the call of its chairman. The advisory committee shall give written notice of the date, place, and subject of each of its meetings to the secretary of state, who shall then post the notice on a bulletin board to be located at a place convenient to the public in the State Capitol. Persons interested in the establishment of rules, regulations, and standards pursuant to this Act shall be given an opportunity to be heard by this committee.

(d) The rules, regulations, and standards adopted by the department under this Act shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

(e) Members of the advisory committee who are not officers or employees of the State of Texas shall be entitled to \$25 each day while engaged in authorized business of the committee and in addition thereto shall be entitled to travel and other necessary expenses incurred in performing their duties on the committee. Such compensation and reimbursement will be made from monies appropriated to the department. Other members of the committee shall have their expenses paid by their respective agencies to the same extent as authorized for travel performed for such agencies.

[Sec. 3. Blank.]

**Licensed Physicians; Permits**

Sec. 4. Any physician licensed by the Texas State Board of Medical Examiners or any institution, public or private, organized and operated under the laws of this state for the purpose of providing health services may apply to the department on forms approved by the department for a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons. The department shall issue a permit to applicants qualified according to its rules, regulations, and standards. A permit issued pursuant to this Act shall remain in effect until suspended or revoked by the department or surrendered by the holder thereof.

**Programs for Drug-Dependent Persons**

Sec. 5. The Texas Department of Mental Health and Mental Retardation shall have the responsibility to promote and develop comprehensive programs for drug-dependent persons which include maintenance treatment programs involving the supplying of synthetic narcotics to those persons. Such programs shall be implemented through the state hospitals and through grants-in-aid to local Mental Health and Mental Retardation boards of trustees.

**Notice for Noncompliance; Permit Denial, Suspension or Revocation; Hearing; Procedure**

Sec. 6. (a) The State Department of Health shall give an applicant or permit holder notice of failure to comply with the rules, regulations, and standards established pursuant to this Act, shall afford the applicant or permit holder a reasonable opportunity to achieve or to demonstrate compliance, and shall give the applicant or permit holder an opportunity for hearing before denying, suspending or revoking a permit. Such proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

(b) The procedure for such hearings shall be prescribed by the rules, regulations, and standards established pursuant to this Act. The department shall notify an applicant whose application is denied and a permit holder whose permit is suspended or revoked.

**Appeal; Notice; Transcript; Disposition by Travis County District Court**

Sec. 7. (a) Any applicant or permit holder may appeal the denial, suspension, or revocation of a permit by filing notice of appeal in the district court of Travis County and with the department within 30 days after receiving notice of the decision of the department. Upon receiving notice of appeal, the department shall file with the court a transcript of the hearing at which the application or permit was denied, suspended, or revoked. The attorney general shall represent the department in the district court of Travis County in any case involving a decision of the department.

(b) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved.

(c) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

(d) If the court affirms the decision of the department, the applicant or permit holder shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

**Reports and Records**

Sec. 8. The Department may require every applicant or permit holder to make annual, periodical, and special reports, and to keep such records as it considers necessary to insure compliance with the provisions of this Act and

the rules, regulations and standards of the department.

**Investigations to Obtain Compliance**

Sec. 9. The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this Act and such rules, regulations, and standards as the department prescribes.

**Restraint of Violations; Injunction**

Sec. 10. (a) For cause shown, the district court of Travis County shall have jurisdiction to restrain violation of this Act and of the rules, regulations and standards established pursuant to this Act.

(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person, or against any public or private institution, to restrain the violation of this Act and the rules, regulations and standards established pursuant to this Act.

**Penalties**

Sec. 11. A person who violates any provision of this Act or any rule or regulation promulgated under this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$3,000 or by confinement in the county jail for not more than six months, or both.

**Severability**

Sec. 12. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the Legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2000, ch. 618, eff. June 4, 1971.]

**Art. 4476-12. Sale of Preparations Containing Thallium Sulphate**

Sec. 1. (a) It shall be unlawful to sell, or offer for sale, any rat poison, insect poison, or any other preparation which contains thallium sulphate, or any other thallium compound, in sufficient quantity to be dangerous to the health or life of a human being.

(b) A sufficient quantity of thallium sulphate or any other thallium compound to be dangerous to the life of a human being is herein defined as one containing more than one per cent (1%) of thallium, expressed as metallic.

Sec. 2. Any person who violates any provision of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Fifty Dollars (\$50), nor more than Two Hundred Dollars (\$200).

[Acts 1957, 55th Leg., p. 1346, ch. 457.]

**Art. 4476-13. Hazardous Substances; Labeling; Sale.**

**Definitions**

Sec. 1. When used in this Act, unless the context requires a different definition:

(1) "Department" means the Department of Health.

(2) "Person" includes any individual, partnership, corporation or association, or legal representative or agent.

(3) "Commerce" means any and all commerce within the State of Texas and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

(4) "Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; and any radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department finds by regulation that the substance is sufficiently hazardous to require labeling in accordance with the provisions of this Act in order to protect the public health. The term "hazardous substance" does not apply to economic pesticides subject to the State or Federal Insecticide, Fungicide, and Rodenticide Act<sup>1</sup> nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act<sup>2</sup> or to beverages complying with or subject to the Federal Alcohol Administration Act,<sup>3</sup> or to the Texas Food, Drug, and Cosmetic Act,<sup>4</sup> nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a private residence, nor does it apply to or include any source material, special nuclear material, or by-product material as defined in the federal Atomic Energy Act of 1954, as amended,<sup>5</sup> and regulations issued pursuant thereto by the Atomic Energy Commission.

(5) "Toxic" means any substance other than a radioactive substance which has the capacity to produce personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface.

(6) "Highly toxic" means any substance which produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered, or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, if the inhaled concentration is likely to be encountered by any person when the substance is used in any reason-

bly foreseeable manner; or which produces death within 14 days in half or more than half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. However, if the department finds that available data based on human experience indicate results different from those obtained on animals, the human data shall take precedence.

(7) "Corrosive" means any substance which in contact with living tissue will cause destruction of that tissue by chemical action. It does not refer to chemical action on inanimate surfaces.

(8) "Irritant" means any noncorrosive substance which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means any substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(10) "Flammable" applies to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester. Any substance which has a flash point at or below 20 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester shall be designated "extremely flammable." However, the flammability of solids, children's clothing, and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to these materials or containers, and shall be established by regulations issued by the department.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged, in an immediate container intended or suitable for delivery to the ultimate consumer, a display of this matter directly on the article involved or on a tag or other suitable material affixed thereto.

(13) "Immediate container" does not include package liners.

(14) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance,

or which bears or contains a hazardous substance in a manner which is susceptible of access by a child to whom the toy or other article is entrusted, intended or packaged in a form suitable for use in the household or by children), which fails to bear a proper label as required by this Act.

<sup>1</sup> Article 135b-5; 7 U.S.C.A. § 135 et seq.

<sup>2</sup> 21 U.S.C.A. § 301 et seq.

<sup>3</sup> 27 U.S.C.A. § 201 et seq.

<sup>4</sup> Article 4476-5.

<sup>5</sup> 42 U.S.C.A. § 2011 et seq.

#### Labeling

Sec. 2. (a) It shall be the responsibility of the department to see that hazardous substances are labeled sufficiently to inform users of dangers involved in the use, storage, or handling of such substances, together with instructions for actions to be followed or avoided and instructions where necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) Any statement required by the provisions of Subsection (a) of this section shall be located prominently and shall be written in the English language in conspicuous and legible type which contrasts in typography, layout, or color with other printed matter on the label. The department may also require any such statement to be written in the Spanish language in addition to the English language.

(c) Any statement required by the provisions of Subsection (a) of this section shall also appear on the outside container or wrapper of any substance, and on any container sold separately and intended for the storage of a hazardous substance, unless the statement is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

#### Banned Hazardous Substances

Sec. 3. (a) Any article of clothing (other than diapers) intended for the use of children which is not in compliance with flammability standards for such clothing established by the department shall be declared to be a banned hazardous substance by the department. The determination by the department that articles of clothing of a specified range of sizes are intended for the use of a child 14 years or younger shall be conclusive.

(b) Any toy or other article other than clothing intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner susceptible of access by a child to whom the toy or other article is entrusted, shall be declared to be a banned hazardous substance by the department.

(c) Any hazardous substance intended, or packaged in a form suitable for, use in a household, which, notwithstanding cautionary labeling required by this Act, is potentially so

dangerous or hazardous when present or used in a household, that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, shall be declared to be a banned hazardous substance by the department.

(d) Any article subject to the provisions of this Act which cannot be labeled adequately to protect the public health and safety, or which presents an imminent danger to the public health and safety, shall be declared a banned hazardous substance by the department.

(e) The provisions of this section do not apply to any toy or article such as chemical sets which by reason of functional purpose requires the inclusion of a hazardous substance, and which bears labeling which in the judgment of the department gives adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings; nor do the provisions of this section apply to the manufacture, sale, distribution, or use of fireworks of any class.

#### Examinations and Investigations

Sec. 4. (a) In order to enforce the provisions of this Act, any officer, employee, or agent of the department may, upon the presentation of appropriate credentials to the owner, operator, or agent, enter at reasonable times any factory, warehouse, or establishment in which any hazardous substance is manufactured, processed, packaged, or held for introduction into commerce or is held after introduction into commerce, or any vehicle used to transport or hold any hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein.

(b) The officer, employee, or agent may obtain samples of any materials, packaging, and labeling; however, he shall pay or offer to pay the owner, operator, or agent in charge for any sample and shall give a receipt describing the samples obtained.

#### Rules and Regulations; Hearings; Appeals

Sec. 5. (a) The department may, after public hearing following due notice, issue reasonable rules and regulations necessary for the efficient enforcement of this Act. The rules and regulations shall conform with regulations established pursuant to the federal Hazardous Substances Act,<sup>1</sup> where applicable.

(b) If any person affected by any rule or regulation adopted and established by the department should take exception to the adoption and issuance of any rule or regulation, such person may request a hearing before the department, in which event the department shall not enforce such rule or regulation except as hereafter provided. Within thirty days after receipt of such request, the hearing must be

held. The complaining person shall be given at least ten days notice of the place, date and time of such hearing. After fair hearing the department shall issue a written order or decision, upholding, amending, extending or reversing the previous action, and stating reasons therefor. If within thirty days of the date of such order or decision, there is no appeal as provided for in Subsection (c) hereof, such rule or regulation shall become effective.

(c) If any person be dissatisfied with an order or decision following a hearing pursuant to Subsection (b) of this section, such person may bring suit against the department to repeal, amend, vacate or set aside such order, decision, rule or regulation, in a District Court of Travis County, Texas. When such suit is filed, the plaintiff may apply for an injunction restraining the department from enforcing its order or decision pending the outcome of the trial on the merits, and the court in its discretion may grant such application for injunction or the court may continue the department's order or decision in effect where the court finds it necessary to protect the public health. Upon a trial on the merits, the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative action, order or decision. All such appeals shall be de novo as that term is used and understood in appeals from Justice of the Peace Courts to County Courts.

<sup>1</sup> 15 U.S.C.A. § 1261 et seq.

#### Prohibited Acts

Sec. 6. The following acts are prohibited:

(1) the holding or offering for sale, the sale, the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label, or the doing of any other act with respect to, a hazardous substance if such act is done while the substance is in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance, and the delivery or proffered delivery thereof for pay or otherwise;

(4) the failure to permit entry or inspection, or to provide records as authorized by the provisions of this Act;

(5) the use by any person to his own advantage, or revealing other than to the department or to a court when relevant in

any judicial proceeding under this Act, of any information acquired in an inspection authorized by the provisions of this Act concerning any method or process which as a trade secret is entitled to protection;

(6) the removal or disposal of a detained article or substance in violation of Section 11.

#### Penalties

Sec. 7. Any person who violates any of the provisions of this Act is guilty of a misdemeanor and may upon conviction be fined not less than \$100, nor more than \$1,000, or be imprisoned for not more than 90 days, or both; but for any offense committed with intent to defraud, or for second and subsequent offenses, the penalty shall be a fine of not less than \$1,000 nor more than \$3,000, or imprisonment for not more than 180 days, or both.

#### Exclusion

Sec. 7a. The provisions of this Act shall not apply to the manufacture, distribution, sale or use of diapers.

#### Exemptions

Sec. 8. The penalties described in Section 7 of this Act do not apply to any person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith, and if the person subsequently furnishes on request the name and address of the person from whom he purchased or received the banned or misbranded hazardous substance, and copies of all documents, if any, pertaining to the original delivery of the hazardous substance to him.

#### Necessity of Department Action

Sec. 9. No article or substance is a banned hazardous substance, unless a regulation to that effect has been issued and adopted by the department.

#### Records

Sec. 10. For the purposes of enforcing the provisions of this Act, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding any hazardous substances so received, shall, upon the request of the department, permit a representative thereof at reasonable times to have access to, and to copy, all records showing the movement in commerce, or the holding after such movement, of any hazardous substance, and the quantity, consignee, and shipper thereof. However, evidence obtained in this manner may not be used in a criminal prosecution of the person from whom it is obtained, and carriers shall not be subject to the other provisions of this Act by reason of their receipt, carriage, holding, or delivery of hazardous substances in their usual course of business.

#### Seizure

Sec. 11. (a) Whenever a duly authorized agent of the department has good reason to believe that a hazardous substance is a banned or



misbranded hazardous substance, he shall affix to the article a tag or other appropriate marking, giving notice that such article is, or is suspected of being a banned or misbranded hazardous substance and has been detained, and warning all persons not to remove from the premises or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

(b) The department shall petition to the judge of district court of the county in which the article or articles are located asking that the court authorize the destruction of the article or articles. If the court determines that the article or articles are banned or misbranded hazardous substances, the department shall destroy the article or articles, and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of the article or articles. However, if the court finds that misbranding occurred in good faith and could be corrected by proper labeling, the court may direct that the article or articles be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article or articles are not banned or misbranded hazardous substances, it shall order the department to remove the tags.

#### Effective Date

Sec. 12. The effective date of this Act is January 1, 1972.

[Acts 1971, 62nd Leg., p. 3372, ch. 1033, eff. Jan. 1, 1972.]

### Art. 4476-14. Dangerous Drugs

#### Intent of Legislature

Sec. 1. The Legislature of the State of Texas hereby finds that it is essential to the public health and safety to regulate and control the handling, sale and distribution of "dangerous drugs," as defined in this Act.

It is, therefore, hereby declared to be the policy and intent of the Legislature of the State of Texas and the purpose of this Act to regulate and control such handling, sale, and distribution, and, in particular, but without limitation of such purpose, to insure that the public shall receive the therapeutic benefits of "dangerous drugs" under medical supervision to the full extent required to assure safety and efficiency in their use; to complement and supplement the Laws and Regulations of the Congress of the United States and the appropriate agencies of the Federal Government affecting such handling, sale, and distribution; to prevent such handling, sale or distribution for harmful or illegitimate purposes; and to place upon manufacturers, wholesalers, licensed compounders of prescriptions, and persons prescribing such drugs, a basic responsibility for preventing the improper distribution of such drugs to the extent that such drugs are produced, handled, sold, or prescribed by them.

#### Definitions

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug or device that is not included in Schedules I through V of the Texas Controlled Substances Act and that is unsafe for self-medication, and includes the following:

(1) Tranquilizers.

(2) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2½%) strength.

(3) Any drug or device which bears the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(4) Phendimetrazine, its salts, derivatives, or compounds or mixtures thereof.

(5) Pentazocine, its salts, derivatives, or compounds or mixtures thereof.

(b) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.

(c) The term "patient" means, as the case may be:

(1) The individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(2) The owner or the agent of the owner of the animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(d) The term "person" includes individual, corporation, partnership, and association.

(e) The term "practitioner" means a person licensed by the State Board of Medical Examiners, State Board of Dental Examiners, State Board of Chiropody Examiners, and State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs.

(f) The term "pharmacist" shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense practitioners' prescriptions, drugs, medicines, and poisons.

(g) The term "prescription" means a written order, and in cases of emergency, a telephonic order, by a practitioner (or his agent as designated in writing to the pharmacist) to a pharmacist for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such

dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

(h) The term "manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(i) The term "wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in Subdivisions (1) to (6) inclusive of Section 4.

(j) The term "warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(k) The term "Board" means Texas State Board of Pharmacy.

#### Unlawful Acts and Omissions

Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

(a) The delivery or offer of delivery of any dangerous drug unless:

(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, upon an original prescription, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

(b) The refilling of any prescription for a dangerous drug, unless and as designat-

ed on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.

(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a)(1) and (2) of this Act.

(e) The refusal to make available and to accord full opportunity to check any record or file as required by Section 5 and Section 6.

(f) The failure to keep records as required by Section 5 and Section 6.

(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.

(h) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act.

#### Applicability of Paragraphs (a) and (d) of Section 3

Sec. 4. The provisions of paragraphs (a) and (d) of Section 3 shall not be applicable:

(a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(b) To the possession of dangerous drugs by such persons or their agents or employees for such use:

(1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

(2) Practitioners;

(3) Persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

(4) Hospitals which procure dangerous drugs for lawful administration by practitioners;

(5) Officers or employees of Federal, State, or local government;

(6) Manufacturers and Wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes).

(7) Carriers and Warehousemen.

Duties of Exempt Persons

Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

(a) (1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1), (4), and (5) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1), (4), and (5) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1), (4), and (5) hereof.

(b) Pharmacies as set forth in Section 4(b)(1), shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1), (4), and (5) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1), (4), and (5) hereof.

Files or Records; Inspection; Inventory of Drugs

Sec. 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a)(1), (4), and (5) hereof, by Section 5 shall

(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2(a)(1), (4), and (5) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

Contracts for Purchases From or Sales By Out-of-State Persons; Forwarding Copies of Orders to State Board of Pharmacy

Sec. 7. Repealed by Acts 1973, 63rd Leg., p. 1168, ch. 429, § 6.03(d), eff. Aug. 27, 1973.

Unlawful Manufacture, Sale or Possession; Seizure and Confiscation; Statement of Destruction

Sec. 8. All dangerous drugs as herein defined, manufactured, sold, or had in possession contrary to any provision hereof shall be and the same are declared to be contraband and

shall be subject to seizure and confiscation by any officer or employee of the Board or by any peace officer who is authorized to and charged with the duty of enforcing the provisions of this Act.

All dangerous drugs seized and confiscated under the provisions of this Act by any officer or employee of the Board, or by any peace officer, may, at the discretion of the Board be destroyed in such manner as the Board deems appropriate. Prior to any such destruction, an inventory shall be made of the dangerous drug or drugs to be destroyed and such inventory shall be accompanied by a statement, sworn and subscribed to, that such dangerous drugs are being destroyed at the direction of the Board by an officer or employee of the Board and in the presence of another officer or employee of the Board. The persons in attendance at the time of such destruction shall be specified and in what capacity they are acting and shall sign such statement and attest to the correctness of same. Such signed statement shall be filed with the State Board of Pharmacy.

Injunction

Sec. 9. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceedings, or remedy authorized by law.

Proceedings Instituted by Board; Employment of Private Counsel

Sec. 10. Any legal proceedings instituted under the provisions of this Act by the Board shall be by any county attorney, district attorney, or the Attorney General. The Board is hereby specifically prohibited from employing private counsel in any legal proceedings instituted by or against said Board under the provisions of this Act.

Conviction Upon Uncorroborated Testimony of Accomplice

Sec. 11. Upon a trial for a violation of any of the provisions of this Act, a conviction may be had upon the uncorroborated testimony of an accomplice.

Denial of Exceptions, Excuses, Provisos or Exemptions in Complaint, Information or Indictment; Burden of Proof

Sec. 12. In any complaint, information, or indictment, and in any action, or proceeding brought for the enforcement of any provisions of this Act, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

Using Minor as Agent

Sec. 13. Any person who violates any provision of this Act by use of a minor as an agent, or who unlawfully furnishes any dangerous drug, as that term is defined herein,

shall be deemed in violation of this Act, and subject to the penalties prescribed for the violation of provisions of this Act.

#### Forging or Altering Prescriptions

Sec. 14. Every person who forges or increases the quantity of dangerous drugs in any prescription, or who issues a prescription bearing a forged or fictitious signature for any dangerous drug, or who obtains or attempts to obtain any dangerous drug by any forged, fictitious, or altered prescription, or who obtains or attempts to obtain any dangerous drug by means of fictitious or fraudulent telephone calls, or who has in his possession any dangerous drug secured by such forged, fictitious, or altered prescription or through the means of a fictitious or fraudulent telephone call, shall be deemed in violation of this Act and subject to the penalties prescribed for the violation of provisions of this Act.

#### Penalties

Sec. 15. (a) Any person possessing in violation of Section 3 of this Act any dangerous drug defined in Section 2(a) of this Act shall be fined an amount not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation, any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than one (1) year, or by both.

(b) Any person who sells or delivers or offers to sell or deliver in violation of this Act any dangerous drug defined in this Act, shall be guilty of a felony and upon conviction is punishable by confinement in the penitentiary for not less than two (2) nor more than ten (10) years and, in addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000). Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(c) Any person violating any other provision of this Act not set out in Subsection (a) or (b) of this section shall be fined an amount not exceeding One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than one (1) year, or by both.

(d) Any person not authorized by this Act or Federal law who manufactures any dangerous drug is guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than two (2) years or more than ten (10) years. In addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000).

#### Search Warrant

Sec. 15A. Any peace officer may apply for a search warrant in accordance with the provisions of the Code of Criminal Procedure, 1965, as amended, to search for any drugs unlawfully possessed under this Act. The application for the issuance of and execution of any such warrant issued hereunder shall comply with the terms and provisions of the Code of Criminal Procedure, 1965, as amended.

[Acts 1959, 56th Leg., p. 923, ch. 425; Acts 1965, 59th Leg., p. 971, ch. 466, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., pp. 1847, 1848, ch. 720, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1969 61st Leg., p. 1474, ch. 437, §§ 1 to 6, eff. June 4, 1969; Acts 1971, 62nd Leg., p. 1804, ch. 534, §§ 6, 7, eff. June 1, 1971; Acts 1971, 62nd Leg., pp. 2391, 2392, ch. 746, §§ 1, 2, eff. June 8, 1971; Acts 1971, 62nd Leg., pp. 2785 to 2789, ch. 901, §§ 1 to 4, eff. June 14, 1971; Acts 1973, 63rd Leg., pp. 1165 to 1168, ch. 429, §§ 6.03(a), 6.03(b), 6.03(c), 6.03(d), eff. Aug. 27, 1973.]

### Art. 4476-15. Controlled Substances Act

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act may be cited as the "Texas Controlled Substances Act."

##### Definitions

Sec. 1.02. For the purposes of this Act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice or its successor agency.

(4) "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.

(5) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I through V and Penalty Groups 1 through 4 of this Act.

(6) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513)<sup>1</sup> or its successor.

(7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name, or

other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(9) "Director" means the Director of the Texas Department of Public Safety or an employee of the department designated by him.

(10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(11) "Dispenser" means a person who dispenses.

(12) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(13) "Distributor" means a person who distributes.

(14) "Drug" means:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.

(15) "Immediate precursor" means a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the con-

trol of which is necessary to prevent, curtail, or limit manufacture of such controlled substance.

(16) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(17) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A) of this subsection, but not including the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation

thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine of ecgonine.

(19) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextro-rotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

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

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(23) "Possession" means actual care, custody, control or management.

(24) "Practitioner" means:

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(25) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(26) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

## SUBCHAPTER 2. STANDARD AND SCHEDULES

### Controlled Substances

Sec. 2.01. The legislature determines that the substances listed in Schedules I, II, III, IV, and V and in Penalty Groups 1, 2, 3, and 4 shall be controlled substances.

### Nomenclature

Sec. 2.02. The controlled substances listed or to be listed in the schedules in Schedules I, II, III, IV, and V and Penalty Groups 1, 2, 3, and 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

### Schedule I

Sec. 2.03. (a) Schedule I shall initially consist of the controlled substances listed in this section.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Dextrorphan;
- (6) Diampromide;
- (7) Diethylthiambutene;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;
- (10) Dioxaphetyl butyrate;
- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etoxeridine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacylmorphin;
- (19) Meprodine;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenadoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenoperidine;
- (31) Piritramide;
- (32) Proheptazine;
- (33) Properidine;
- (34) Propiram;
- (35) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of iso-

mers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (22) Thebacon.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2, 5-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marihuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

- delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;
- delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

#### Schedule II

Sec. 2.04. (a) Schedule II shall initially consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Apomorphine;
- (H) Codeine;
- (I) Ethylmorphine;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subsection, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;

- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, including its salts, isomers, and salts of isomers;
- (3) methylphenidate and its salts; and
- (4) phenmetrazine and its salts.

(e) Methaqualone.

#### Schedule III

Sec. 2.05. (a) Schedule III shall initially consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methyprylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.



## Schedule IV

Sec. 2.06. (a) Schedule IV shall initially consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbitol;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

## Schedule V

Sec. 2.07. (a) Schedule V shall initially consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

## Exclusion from Schedule

Sec. 2.08. A nonnarcotic substance is excluded from Schedules I through V if the sub-

stance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act<sup>1</sup> and the commissioner shall have no power to include a nonnarcotic substance in Schedules I through V if the substance may lawfully be sold over-the-counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

## Authority to Control

Sec. 2.09. (a) The legislature, under the directions hereinafter expressed, delegates to the commissioner with approval of the State Board of Health the power to add substances to, or delete or reschedule any substance enumerated in, the schedules enumerated in Sections 2.03 through 2.07 of this Act. The commissioner may not add any substance to the schedules if the substance has been deleted from the schedules by the legislature, or sought to be added to the schedules by the legislature but failed to pass when considered by a quorum of either house. The commissioner shall have no authority to extend scheduling to distilled spirits, wine, malt beverages, or tobacco.

(b) In making a determination regarding a substance, the commissioner shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this Act.

(c) After considering the factors enumerated in Subsection (b) of this section, the commissioner shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.

(d) If the commissioner designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(e) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the commissioner, the commissioner shall similarly control the substance under this Act after the expiration of 30 days from publication in the Federal Register of a final order designat-

ing a substance as a controlled substance or rescheduling or deleting a substance unless within that 30-day period the commissioner objects to inclusion. In that case, the commissioner shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deleting, control as to that particular substance under this Act is stayed until the commissioner publishes his decision.

(f) The commissioner, in making his decision as to which schedule a controlled substance shall be assigned, shall perform the tests enumerated in Sections 2.10 through 2.14.

(g) Within 10 days of any action taken pursuant to Subsection (a) of this section, the commissioner shall provide written notice of such action to the director and to each state licensing board having jurisdiction over practitioners.

#### Schedule I Tests

Sec. 2.10. The commissioner shall place a substance in Schedule I if he finds that:

- (1) the substance has high potential for abuse; and
- (2) the substance has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

#### Schedule II Tests

Sec. 2.11. The commissioner shall place a substance in Schedule II if he finds that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) abuse of the substance may lead to severe psychological or physical dependence.

#### Schedule III Tests

Sec. 2.12. The commissioner shall place a substance in Schedule III if he finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

#### Schedule IV Tests

Sec. 2.13. The commissioner shall place a substance in Schedule IV if he finds that:

- (1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

#### Schedule V Tests

Sec. 2.14. The commissioner shall place a substance in Schedule V if he finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance may lead to limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

#### Alterations in Schedule: Notice and Hearing

Sec. 2.15. Each alteration made by the commissioner in a schedule under Subchapter 2 of this Act, except pursuant to Section 2.09(e), must be preceded by a public hearing held by the commissioner in Austin following publication of notice in at least three newspapers of general circulation in this state. The notice shall state the time and place of the hearing, which must be at least 30 days but not more than 60 days after the date of the publication, and the substance of the proposed alteration.

#### Republishing of Schedules

Sec. 2.16. The commissioner shall republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually, reflecting the changes, if any, made in the schedules. The commissioner shall publish the schedules by filing a certified copy with the secretary of state.

#### Dangerous Drugs

Sec. 2.17. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code):<sup>1</sup>

- (1) tranquilizers;
- (2) procaine, its salts, derivatives, or compounds or mixtures thereof;
- (3) any substance that bears the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian;
- (4) phendimetrazine, its salts, derivatives, or compounds or mixtures thereof;
- (5) pentazocine, its salts, derivatives, or compounds or mixtures thereof.

<sup>1</sup> Transferred to article 4476-14.

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Registration Requirements

Sec. 3.01. (a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within this state must possess a valid registration. Registrations must be obtained annually from the director in accordance with rules promulgated by him under Section 3.02.

(b) Persons registered by the director under this Act to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

(c) No registration to manufacture, distribute, analyze, or conduct research with controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect the controlled premises as defined in Subchapter 5 of this Act.

(d) No registration to dispense controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect records required to be kept by this Act.

(e) The following persons need not register and may lawfully possess controlled substances under this Act:

(1) an agent or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment; or

(3) an ultimate user, as that term is defined herein, or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, analyzes, or possesses controlled substances.

(g) The director may inspect the establishment of an applicant for registration in accordance with this Act.

(h) The director may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety, provided the Attorney General of the United States has issued a similar waiver pursuant to the Federal Controlled Substances Act.<sup>1</sup>

<sup>1</sup> See 21 U.S.C.A. § 822(d).

Rules

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge up to \$5 per registrant as a reasonable fee for the costs necessary to administer this Act.

(c) Those registrants licensed by a state agency shall include the annual registration fee as a part of the license fee to the state agency.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

Registration

Sec. 3.03. (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

(1) the applicant is registered for such purpose pursuant to the Federal Controlled Substances Act; and

(2) the applicant has made proper application and paid the applicable fee.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

(1) the applicant is a practitioner licensed under the laws of this state; and

(2) the applicant has made proper application and paid the applicable fee.

(c) The director shall not require separate registration under this subchapter for a practitioner engaged in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Only practitioners registered under federal law to conduct research with or analyze Schedule I substances may conduct research with or analyze Schedule I substances within this state upon furnishing the director evidence of that federal registration.

(d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

Grounds for Revocation and Suspension

Sec. 3.04. (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended or revoked in accordance with this Act upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;

(3) has had his registration under the Federal Controlled Substances Act<sup>1</sup> suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; or

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

(b) The revocation or suspension of a registration may be limited to the particular schedule or controlled substance within a schedule with respect to which grounds for revocation or suspension exist.

(c) If a registration is suspended or revoked, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state as provided under Section 5.04 of this Act.

(d) The purpose of this Act being to promote the public health and welfare by the control of the illegal drug traffic, the operation of any registrant in violation of the regulations specified in this section is hereby declared to be a public nuisance, and the director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender.

(e) The Rules of Civil Procedure shall govern proceedings under this section except when in conflict herewith.

(f) The director shall promptly notify the bureau and state agencies of all orders suspending or revoking registration and all forfeitures of controlled substances.

<sup>1</sup> See 21 U.S.C.A. § 824.

Procedure for Suspension and Revocation

Sec. 3.05. (a) A registration under this Act may be revoked or suspended for cause set forth in Section 3.04 by any district court of this state. The attorney representing the state in the various district courts shall have the authority, and it shall be his duty, to file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant under this Act upon presentation of competent evidence by the director. A proceeding under this section may be maintained in the county of residence of the registrant, in the county where the registrant maintains a place of business or practice, or in the county in which a wrongful act under Section 3.04 was committed.

(b) The petition shall be sufficient if it contains substantially the following requisites:

(1) the petitioner shall be "The State of Texas";

(2) it shall be directed to the registrant whose license is sought to be revoked or suspended;

(3) it shall contain a short statement of the cause of action sufficient to give notice of the grounds upon which revocation or suspension of the registration is sought;

(4) it shall ask for a revocation or suspension of the registration; and

(5) it shall be signed and verified by the director.

Records of Registrants

Sec. 3.06. Persons registered to manufacture, distribute, analyze, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with recordkeeping and inventory requirements of federal law and with any additional rules the director issues.

Order Forms

Sec. 3.07. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

Prescriptions

Sec. 3.08. (a) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy.

(b) In emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing by the

pharmacy and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 3.06. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act,<sup>1</sup> shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) No prescription for Schedule II narcotic drugs shall be filled after the second day the prescription was issued.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

SUBCHAPTER 4. OFFENSES AND PENALTIES

Classification of Offenses and Punishment

Section 4.01. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (A) a fine not to exceed \$2,000;
- (B) confinement in jail for a term not to exceed one year; or
- (C) both such fine and imprisonment.

(2) Class B misdemeanors. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (A) a fine not to exceed \$1,000;
- (B) confinement in jail for a term not to exceed 180 days; or
- (C) both such fine and imprisonment.

(3) Class C misdemeanors. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$200.

(b) Felonies are classified according to the relative seriousness of the offense into three categories:

(1) Felonies of the first degree. An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years.

(2) Felonies of the second degree. An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 20 years or less than 2 years. In addition to imprisonment, an individual adjudged

guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

(3) Felonies of the third degree. An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 10 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$5,000.

(c) A court may set aside a judgment or verdict of guilty of any felony of the third degree other than a violation of Section 4.03 involving a controlled substance in Penalty Group 2 and enter a judgment of guilt and punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(d) When a court is authorized to enter judgment of guilty and sentence for a lesser category of offense as provided in this subchapter, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Criminal Classification

Sec. 4.02. (a) For the purpose of establishing criminal penalties for violation of a provision of this Act, there are established the following groups of controlled substances.

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Allylprodine;
- (B) Benzethidine;
- (C) Betaprodine;
- (D) Clonitazene;
- (E) Dextrorphan;
- (F) Diampromide;
- (G) Diethylthiambutene;
- (H) Dimenoxadol;
- (I) Dimethylthiambutene;
- (J) Dioxaphetyl butyrate;
- (K) Dipipanone;
- (L) Ethylmethylthiambutene;
- (M) Etonitazene;
- (N) Etoxeridine;
- (O) Furethidine;
- (P) Hydroxypethidine;
- (Q) Ketobemidone;
- (R) Levophenacymorphan;
- (S) Meprodine;

- (T) Methodol;
- (U) Moramide;
- (V) Morpheridine;
- (W) Noracymethadol;
- (X) Norievorphanol;
- (Y) Normethadone;
- (Z) Norpipanone;
- (AA) Phenadoxone;
- (BB) Phenampromide;
- (CC) Phenomorphan;
- (DD) Phenoperidine;
- (EE) Piritramide;
- (FF) Proheptazine;
- (GG) Properidine;
- (HH) Propiram;
- (II) Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;
- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Etorphine;
- (J) Heroin;
- (K) Hydromorphanol;
- (L) Methyldesorphine;
- (M) Methyldihydromorphine;
- (N) Morphine methylbromide;
- (O) Morphine methylsulfonate;
- (P) Morphine-N-Oxide;
- (Q) Myrophine;
- (R) Nicocodeine;
- (S) Nicomorphine;
- (T) Normorphine;
- (U) Pholcodine;
- (V) Thebacon.

(3) Any of the following substances, except those narcotic drugs listed in another group, however produced:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;

- (vii) Apomorphine;
- (viii) Codeine;
- (ix) Ethylmorphine;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone;
- (xvi) Thebaine;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(4) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Alphaprodine;
- (B) Anileridine;
- (C) Bezitramide;
- (D) Dihydrocodeine;
- (E) Diphenoxylate;
- (F) Fentanyl;
- (G) Isomethadone;
- (H) Levomethorphan;
- (I) Levorphanol;
- (J) Metazocine;
- (K) Methadone;
- (L) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (M) Moramide-Intermediate, 2-methyl-3-morpholine-1, 1-diphenylpropane-carboxylic acid;
- (N) Pethidine;
- (O) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (P) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate;
- (Q) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (R) Phenazocine;
- (S) Piminodine;
- (T) Racemethorphan;

(U) Racemorphan.

(5) Lysergic acid diethylamide.

(6) Methamphetamine, including its salts, isomers, and salts of isomers.

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine.

(c) Penalty Group 2. Penalty Group 2 shall include any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) 3,4-methylenedioxy amphetamine;
- (B) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (C) 3,4,5-trimethoxy amphetamine;
- (D) Bufotenine;
- (E) Diethyltryptamine;
- (F) Dimethyltryptamine;
- (G) 4-methyl-2, 5-dimethoxyamphetamine;
- (H) Ibogaine;
- (I) Mescaline;
- (J) N-ethyl-3-piperidyl benzilate;
- (K) N-methyl-3-piperidyl benzilate;
- (L) Psilocybin;
- (M) Psilocyn;

(N) Tetrahydrocannabinols other than marihuana and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(A) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) methylphenidate and its salts; and

(C) phenmetrazine and its salts.

(2) Methaqualone.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any substances which contain any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(B) Chlorhexadol;

(C) Glutethimide;

(D) Lysergic acid;

(E) Lysergic acid amide;

(F) Methyprylon;

(G) Phencyclidine;

(H) Sulfondiethylmethane;

(I) Sulfonethylmethane;

(J) Sulfonmethane.

(4) Nalorphine.

(5) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(H) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(I) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection (d)(2) of this section is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (A) Barbital;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Ethchlorvynol;
- (E) Ethinamate;
- (F) Methohexital;
- (G) Meprobamate;
- (H) Methylphenobarbital;
- (I) Paraldehyde;
- (J) Petrichloral;
- (K) Phenobarbital.

(8) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (d)(7) is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(9) Peyote, unless unharvested and growing in its natural state.

(e) Penalty Group 4. Penalty Group 4 shall include any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

#### Unlawful Manufacture or Delivery of Controlled Substances

Sec. 4.03. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1, 2, 3, or 4.

(b) An offense under Subsection (a) of this section with respect to:

(1) a controlled substance in Penalty Group 1 is a felony of the first degree;

(2) a controlled substance in Penalty Group 2 is a felony of the third degree;

(3) a controlled substance in Penalty Group 3 is a felony of the third degree;

(4) a controlled substance in Penalty Group 4 is a Class A misdemeanor.

(c) The provisions of Section 4.01(c) and (d) do not apply to an offense under this section relating to a controlled substance in Penalty Group 2.

#### Unlawful Possession of a Controlled Substance

Sec. 4.04. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section with respect to:

(1) a controlled substance in Penalty Group 1 is a felony of the second degree;

(2) a controlled substance in Penalty Group 2 is a felony of the third degree;

(3) a controlled substance in Penalty Group 3 is a Class A misdemeanor;

(4) a controlled substance in Penalty Group 4 is a Class B misdemeanor.

#### Possession and Delivery of Marihuana

Sec. 4.05. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a felony of the third degree if he possesses more than four ounces;



(2) a Class A misdemeanor if he possesses four ounces or less but more than two ounces;

(3) a Class B misdemeanor if he possesses two ounces or less.

(c) The possession of marihuana may not be considered a crime involving moral turpitude.

(d) Except as otherwise provided by this Act, a person commits an offense if he knowingly or intentionally delivers marihuana.

(e) Except as provided in Subsection (f) of this section, an offense under Subsection (d) of this section is a felony of the third degree.

(f) An offense under Subsection (d) is a Class B misdemeanor if the actor delivers one-fourth ounce or less without receiving remuneration.

#### Resentencing

Sec. 4.06. (a) Any person who has been convicted of an offense involving a substance defined as marihuana by this Act prior to the effective date of this Act may petition the court in which he was convicted for resentencing in accordance with the provisions of Section 4.05 of this Act whether he is presently serving a sentence, is on probation or parole, or has been discharged from the sentence.

(b) On receipt of the petition, the court shall notify the appropriate prosecuting official and shall set the matter for a hearing within 90 days.

(c) At the hearing the court shall review the record or the prior conviction. The court shall resentence the petitioner in accordance with the appropriate provision of Section 4.05 and shall grant him credit for all time served on the original sentence prior to the resentencing hearing.

(d) If the time served on the original sentence exceeds the revised sentence imposed by the court under the appropriate provision of Section 4.05, the court shall order the petitioner discharged.

(e) In no event may resentencing under this section lengthen the petitioner's sentence or require him to pay an additional fine.

(f) Nothing in this section shall be construed to authorize the release of a person who is serving concurrent sentences for two or more offenses, if after resentencing such person still has time remaining to be served on a concurrent sentence.

#### Possession of Controlled Substance Paraphernalia

Sec. 4.07. (a) A person, except a practitioner or a person acting under his direction, commits an offense if he possesses a hypodermic syringe, needle, or other instrument that has on it any quantity (including a trace) of a controlled substance in Penalty Group 1 or 2 with intent to use it for administration of the controlled substance by subcutaneous injection in a human being.

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

#### Commercial Offenses

Sec. 4.08. (a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this Act; or

(4) to refuse an entry into any premises for any inspection authorized by this Act.

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

#### Fraud Offenses

Sec. 4.09. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07 of this Act;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV is a Class B misdemeanor.

## Penalties Under Other Laws

Sec. 4.10. Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise imposed by law.

## Peyote Exemption

Sec. 4.11. The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church. However, persons who supply the substance to the church are required to register and maintain appropriate records of receipts and disbursements in accordance with rules promulgated by the director. The exemption granted to members of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

## Conditional Discharge for First Offense

Sec. 4.12. (a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with a violation of this subchapter or is found guilty of a violation of this subchapter after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period prescribed for his probationary period. If during the period of his probation the defendant does not violate any of the conditions of the probation, then upon expiration of the probationary period the court shall discharge him and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without an adjudication of guilt, but a nonpublic record of the proceedings shall be retained by the director solely for use by the courts in determining whether or not, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any provision for enhancement of punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other

procedure provided by law relating to suspension of trial or probation may be followed, in the discretion of the trial court.

## SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

## Inspections

Section 5.01. (a) As used in this section, the term "controlled premises" means:

(1) places where original or other records or documents required under this Act are kept or required to be kept; and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under this Act may lawfully hold, manufacture, or distribute, dispense, administer, possess, or otherwise dispose of controlled substances.

(b) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his functions under this Act, the director is authorized, in accordance with this section, to enter controlled premises and to conduct inspections thereof, and of the things specified in this section, relevant to those functions.

(c) Inspections under Subsection (b) of this section shall be carried out through officers or employees designated by the director. Any such officer or employee shall have the right to enter premises and conduct such inspection at reasonable times upon stating his purpose and presenting to the owner, operator, or agent in charge of the premises appropriate credentials and written notice of his inspection authority.

(d) An officer or employee of the director shall have the right to:

(1) inspect and copy records, reports, and other documents required to be kept or made under this Act;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and except as provided in Subsection (e) of this section, all other things therein including records, files, papers, processes, controls, and facilities appropriate for verification of the records, reports, and documents required to be kept under this Act or otherwise bearing on the provisions of this Act;

(3) examine and inventory any stock of any controlled substance therein and obtain samples of any such substance; and

(4) examine any hypodermic syringe, needle, pipe, or other instrument, device, or contrivance, equipment, control, container, label, or facility relating to possible violation of this Act or any material used,

to be used, or capable of use in diluting or adulterating a controlled substance.

(e) Except when the owner, operator, or agent in charge of the controlled premises consents in writing, no inspection authorized by this section shall extend to:

- (1) financial data;
- (2) sales data other than shipment data; or
- (3) pricing data.

#### Cooperative Arrangements and Confidentiality

Sec. 5.02. (a) The director shall cooperate with federal and state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate and coordinate in training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the bureau and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders within this state, and make the information available for federal, state, and local law enforcement purposes, except that he may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c) of this section; and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau and state agencies relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the director in the exercise of his regulatory functions under this Act.

(c) A practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department of public safety, the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

#### Forfeitures

Sec. 5.03. (a) The following are subject to forfeiture as authorized by this subchapter:

- (1) all controlled substances that are or have been manufactured, distributed, dis-

pensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any person as a common carrier shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act, and no conveyance shall be subject to forfeiture if the delivery involved is an offer to sell.

(b) No property shall be forfeited under this subchapter by reason of any act established by the owner thereof to have been committed without his knowledge or consent.

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of or consented to the act which caused the property to be subject to forfeiture.

#### Seizure

Sec. 5.04. (a) Property subject to forfeiture under this subchapter may be seized by any peace officer under authority of a search warrant issued pursuant to this Act.

(b) Seizure of any property subject to forfeiture may be made without warrant if:

(1) the owner, operator, or agent in charge of the property consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property consents;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this Act; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

## Notification of Forfeiture Proceedings

Sec. 5.05. (a) When any property is seized, proceedings under this section shall be instituted promptly.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure is made a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if address is known;

(2) any secured party who has registered his lien or filed a financing statement as provided by law; and

(3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Texas Department of Public Safety has knowledge.

(c) If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state and if there is any reasonable cause to believe that the vehicle has been registered under the laws of this state, the officer in charge of initiating the forfeiture proceedings shall make inquiry of the State Highway Department as to what the records of the State Highway Department show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(d) If the property is a motor vehicle and is not registered in Texas, then the officer in charge of initiating the proceeding shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, he shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(e) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the officer in charge of initiating the proceeding shall make inquiry of the appropriate official designated in Chapter 9, Business & Commerce Code, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(f) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceedings

shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(g) In the case of all other property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceeding shall make a good faith inquiry to identify the holder of any such instrument.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, security interest, or other interest in the nature of a security interest which affects the property, the officer in charge of initiating the proceeding shall cause any record owner and also any lienholder, secured party, or other person who holds an interest in the property in the nature of a security interest which affects the property to be named a party to the proceeding and to be served with citation of the pendency thereof as provided by the Texas Rules of Civil Procedure.

(i) If a person was in possession of the property subject to forfeiture at the time that it was seized, he shall also be made a party to the proceeding.

(j) If no person was in possession of the property subject to forfeiture at the time that it was seized and if the owner of the property is unknown, the officer in charge of initiating the proceeding shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall issue a citation for service by publication addressed to "the Unknown Owner of . . .", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116 of the Texas Rules of Civil Procedure.

(k) No proceedings instituted pursuant to the provisions of this subchapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with, and the officer initiating the proceeding shall introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c) through (g) of this section.

## Replevy of Seized Property

Sec. 5.06. (a) Any property, other than a controlled substance or raw material, seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised val-

ue of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and abide the judgment of the court.

#### Forfeiture Hearing

Sec. 5.07. (a) An owner of property that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the Texas Department of Public Safety. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove beyond a reasonable doubt that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found beyond a reasonable doubt that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the Department of Public Safety. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows beyond a reasonable doubt that the property is subject to forfeiture, the court shall order the property forfeited to the Department of Public Safety.

(e) Except as otherwise provided in this section, the judge of the district court having jurisdiction may order destruction of all forfeited controlled substances and raw materials. A record of the place where the controlled substances and raw materials were seized, of the kind and quantities so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting the destruction, shall be made to the District Court by the officer who destroys them.

#### Disposition of Forfeited Property

Sec. 5.08. (a) Regarding all controlled substances and raw materials which have been forfeited, the director is authorized to:

(1) retain the property for its official purposes;

(2) deliver the property to a government agency or department for official purposes;

(3) deliver the property to a person authorized by the director to receive it; or

(4) destroy the property that is not otherwise disposed.

(b) All other property that has been forfeited, except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.

(c) The Department of Public Safety may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department. The department may maintain, repair, use, and operate the property with money appropriated to the department for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department pending the outcome of the forfeiture proceedings shall be paid by the department out of its appropriations if such property after final hearing is not forfeited to the department.

(e) The State Highway Department shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

#### Schedules I and II Plant Species—Seizure and Forfeiture

Sec. 5.09. (a) Species of plants from which controlled substances in Schedules I and II may be derived that have been planted or cultivated in violation of this Act, of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state. The provisions of this

subsection do not apply to unharvested peyote growing in its natural state.

(b) The failure, upon demand by any peace officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

#### Burden of Proof; Liabilities

Sec. 5.10. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Act, and the burden of going forward with the evidence with respect to any exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this Act.

(c) No liability is imposed by this Act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.

#### Designation for Federal Funds

Sec. 5.11. The Texas Department of Community Affairs or its designee as provided in this Act is hereby designated as the single state agency to administer, apply for, and disperse funds under Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972<sup>1</sup> and is given all powers necessary to receive these funds.

<sup>1</sup> 21 U.S.C.A. § 1101 et seq.

#### Education and Research

Sec. 5.12. (a) The Texas Department of Community Affairs,<sup>1</sup> in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The executive director of the Texas Department of Community Affairs shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of this Act, he may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Act;

(B) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

<sup>1</sup> See article 4413(201).

#### Search Warrants

Sec. 5.13. A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Act. The application for the issuance of and the execution of a search warrant under this section shall conform to the provisions of the Code of Criminal Procedure, 1965, to the extent applicable.

#### Report of Arrests

Sec. 5.14. (a) All law enforcement agencies in this state shall file semiannually with the director a report of all arrests for drug offenses made by them during the preceding six months. Such reports shall be made on forms provided by the director, and shall contain such information as required therein.

(b) The director shall publish an annual summary of all drug arrests in this state.

### SUBCHAPTER 6. MISCELLANEOUS

#### Saving Provision

Section 6.01. (a) Except as provided in Subsections (b) and (c) of this section, this

Act applies only to offenses committed on and after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

(b) Conduct constituting an offense under existing law that is no longer an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a final conviction existing on the effective date of this Act, for conduct constituting an offense under existing law, is valid and unaffected by this Act.

(c) In a criminal action pending, on appeal, or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court requesting that the court sentence him under the provisions of this Act.

#### Repealer

Sec. 6.02. The Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's Texas Penal Code); Chapter 300, Acts of the 54th Legislature, 1955, as amended (Article 725d, Vernon's Texas Penal Code); and Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes), are repealed.

#### Conforming Amendments

Sec. 6.03. [Amends arts. 4476-5, 4476-14, 4542a, 6184m, 9206 and Penal Auxiliary Laws, art. 667-5f.]

#### Severability

Sec. 6.04. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. [Acts 1973, 63rd Leg., p. 1132, ch. 429, eff. Aug. 27, 1973].

#### Art. 4476-16. Sale of Tobacco to Minor

Whoever shall sell, give or barter, or cause to be sold, given or bartered, to any minor under the age of sixteen years, or knowingly sell to another for delivery to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any

of its forms, shall be fined not less than ten nor more than one hundred dollars.

[1925 P.C.]

### CHAPTER THREE A. BEDDING

#### Art. 4476a. Bedding, Manufacture, Repair, Renovation and Sale

##### Definitions

Sec. 1. (a) The term "bedding," as used in this Act shall mean any mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chairbed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, chaise lounge pad, utility or all purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinets pad, bed rest and lounge-type cushion, and other stuffed or filled article of any description which can be used by any human being for sleeping or reclining purposes.

(b) The term "department," when used in this Act, shall mean the State Department of Health.

(c) The term "person," as used in this Act, shall include persons, partnerships, companies, corporations and associations.

(d) The term "renovate," as used in this Act, shall mean to restore to former condition or to place in good state of repair.

(e) The term "materials," as used in this Act, shall mean all articles, materials or portions thereof, used in the manufacture, repair or renovation of bedding.

(f) The term "new," as used in this Act, shall mean any article or material which has not previously been used for any purpose.

(g) The term "secondhand," as used in this Act, shall mean any article or material or portion thereof, of which former use has been made in any manner whatsoever.

(h) The term "sell," or any of its variants, as used in this Act, shall include any of, or any combinations of the following: sell, offer or expose for sale, include in a sale, barter, trade, deliver, consign, lease, possess with intent to sell or dispose of in any other commercial manner. The possession of any article of bedding, as herein defined, by any manufacturer, renovator, wholesaler or germicidal treatment operator, in the course of business, shall be presumptive evidence of intent to sell.

(i) The term "manufacturer," as used in this Act, shall mean any person whose principal business is the manufacture, from new materials, of articles of bedding for the purpose of resale in or into the State of Texas by a distributor, jobber, wholesaler, retail outlet or subsidiary outlet where the ownership and the name are identical with the manufacturer and/or which is an exclusive sales outlet for that manufacturer.

(j) The term "wholesaler," as used in this Act shall mean any person located outside the

State of Texas who on his own account, sells, distributes or jobs into the State of Texas to another for the purpose of resale any article of bedding or filling material to be used in bedding but shall not include an affiliate or subsidiary where the ownership and the name are identical with the manufacturer and which is the exclusive sales outlet of the manufacturer.

(k) The term "processor," as used in this Act, shall mean any person who manufactures, processes and sells in or into the State of Texas any felt, batting, pads, foam or other filling materials to be used or that could be used in articles of bedding, but shall not include wooden frames and/or metal springs.

(l) The term "germicidal treatment operator," as used in this Act, shall mean any person who is registered by the Department to apply an approved germicidal process to articles of bedding for the purpose of resale by said operator or as a commercial service for another person.

(m) The terms "permit," "license," "registration," or any of their respective variants, as used in this Act, shall be synonymous and may be used interchangeably.

(n) Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

#### Labeling of Bedding Required

Sec. 2. (a) No person shall manufacture, repair, renovate or sell, or have in his possession with intent to sell, any article of bedding, unless there is securely attached, where clearly visible, a white tag, made of substantial cloth or a material of equal quality, as provided in this Act. All tags required by this Section shall be attached at the factory.

(b) Bedding manufactured in whole from all new material shall have attached a tag not less than six (6) square inches in size upon which shall be plainly stamped or printed, in black ink, in the English language, the statement "All New Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the kind and grade of each material used in the filling, expressed in percentages by weight when more than one kind or grade of material is used; and the manufacturer's permit number, assigned by the Department.

(c) Bedding manufactured in whole, or in part, from second hand material shall have securely attached a tag not less than twelve (12) square inches in size upon which shall be plainly printed in red ink, in the English language, the statement "Second Hand Material" in lettering not less than one-fourth ( $\frac{1}{4}$ ) inch in height and the manufacturer's permit number assigned by the Department. The provisions of this paragraph (c) of Section 2 are not intended to apply to bedding reworked, repaired or renovated for the owner for his own use.

(d) Bedding renovated, reworked or repaired for the owner, for the owner's use, from the

owner's material, which is in whole or in part second hand, shall have attached a tag not less than six (6) square inches in size, upon which shall be plainly printed in black ink, in the English language, the statement "Not for Sale, Owner's Own Material which is Second Hand Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the name and address of the owner; and the manufacturer's permit number assigned by the Department.

(e) The terms used on the tag to describe kinds and grades of materials used in filling shall be restricted to those defined in the regulation of the Department, and no trade or substitute terms shall be used.

(f) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag shall be construed to be defacement of the tag.

#### Use and Sale of Materials from Dump-grounds and Junkyards

Sec. 3. No person shall manufacture, repair or renovate bedding or batting, using discarded materials obtained from dump-grounds or junkyards within or without the State of Texas nor shall any person sell or include in a sale any item of discarded bedding obtained from the sources set out in this section.

#### Germicidal Treatment of Bedding and Materials

Sec. 4. (a) No person shall sell, offer for sale or include in a sale any article of second-hand bedding or any article of bedding manufactured in whole or in part from secondhand material, except sofa beds and studio couches, unless such bedding has been germicidally treated and cleaned, by a method approved by the Department. Upholstered sofa beds and studio couches shall be germicidally treated and cleaned only when required by the Rules and Regulations of the Department.

(b) No person shall use in the manufacture, repair and renovation of bedding any material which has been used by a person with an infectious or contagious disease, or which is filthy, oily or harbors loathsome insects or pathogenic bacteria, unless such material is cleaned and germicidally treated by a process or treatment approved by the Department.

(c) No person shall sell, or offer for sale or include in a sale any material or bedding requiring germicidal treatment by this Act unless there is securely attached, by a method approved by the Department, by the person applying the germicidal treatment, a white tag not less than twelve (12) square inches in size, made of substantial cloth or a material of equal quality, upon which shall be plainly printed, in black ink, in the English language, a statement showing that the article or material has been germicidally treated by a method approved



by the State Health Department, the method of germicidal treatment applied, the lot number and the tag number of the article germicidally treated, the name and address of the person for whom germicidally treated, and the permit number of the person applying germicidal treatment.

#### Enforcement of Act

Sec. 5. (a) The Department is hereby charged with the enforcement of this Act, for the protection of the public health and the public welfare. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

(b) No person shall interfere, obstruct, or hinder an authorized representative of the Department in the performance of his duty as set forth in the provisions of this Act.

(c) The Department, through its authorized representative, shall have the authority to enter any place or establishment where bedding is manufactured, repaired, renovated, stored, sold, offered for sale, or where materials are prepared for use in bedding, or where germicidal treatment of bedding is performed, for the purpose of ascertaining whether the requirements of this Act and the regulations of the Department have been met.

(d) The Department, through its authorized representative, is empowered to take samples of materials for inspection and analysis, and to hold for evidence, at a trial, for the violation of this Act any article of bedding or materials manufactured, repaired, renovated, sold or offered for sale, in violation of this Act.

(e) The Department, through its authorized representative, shall have authority to place "Off-Sale" any article of bedding or material which is offered for sale, or which could be offered for sale, in violation of this Act. When articles of bedding or materials are removed from sale, they shall be so tagged; and such tags shall not be removed from the article nor shall the article be disposed of in any manner whatsoever without prior approval by an authorized representative of the Department, or as the Department may direct, after satisfactory proof of compliance with all requirements of this Act and of the regulations of the Department and after a "Release for Sale" has been issued by the Department through its authorized representative.

(f) The violation of a general rule or regulation of procedure promulgated under this Act shall be a violation of this Act.

(g) If the party at interest be dissatisfied with any act, order, ruling or decision of the State Department of Health in connection with the administration of this Act, such party may file an action, naming the State Department of Health as defendant, in any of the District Courts of Travis County to set aside the particular act, order, ruling or decision. The cause

shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the State Department of Health or in its file while the matter was pending before the Department for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the State Department of Health. All acts, orders, rulings and decisions of the State Department of Health shall be final unless an action to set aside as herein authorized is filed within thirty days after the action, ruling or decision is taken or made by the State Department of Health.

#### Permits

Sec. 6. (a) No person shall engage in the business of manufacturing, wholesaling, renovating, and selling any article of bedding in or into the State of Texas unless he shall have first obtained a permit from the Department, nor shall any processor of filling materials to be used in articles of bedding sell such materials in or into the State of Texas unless he shall have first obtained a permit from the Department.

(b) No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the owner of each item. Such records shall be available for inspection at any time by authorized representatives of the Department.

(c) For all initial permits issued, as required by the preceding Paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Fifteen Dollars (\$15). All permits shall expire one year from date of issue and an annual renewal charge of Ten Dollars (\$10) shall be paid to the same Department in order to keep them in force.

(d) For all initial permits issued, as required by the preceding Paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Fifteen Dollars (\$15). All permits shall expire one year from date of issue and an annual renewal charge of Ten Dollars (\$10) shall be paid to the same Department in order to keep them in force.

(e) Any permit issued in accordance with the provisions of this Act may be revoked by the Commissioner of Health, after a hearing and upon proof of violation of any of the provisions of this Act.

#### Stamping, Exemption and Reporting

##### Sec. 7. (a) Stamping.

(1) No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any article of bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by the Department, except that any person desiring to do so may make application to the Department for a stamp exemption, which, if issued, will relieve the holder of the above requirement that an inspection stamp be attached to every tag.

(2) The Department shall register all applicants for stamps and assign to every such person a registry number and/or separate and different serial numbers to be printed on each stamp as a means of identifying the applicant and the stamps issued thereto, and such identification shall not be used by any other person.

(3) Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five Dollars (\$5) for each five hundred (500) stamps. The Department is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the Seal of the State of Texas, the registry number and/or serial numbers assigned by the Department, and such other matter as the Department shall direct.

##### (b) Exemption.

(1) The Department shall register all applicants for stamp exemptions and assign to every such person an exemption number upon receipt by the Department of a proper application on an approved form when such application is accompanied by a registration fee as specified in Paragraph (b)(2) of this Section. Such exemption shall not be transferable and shall not be used by any other person.

(2) For all stamp exemptions as stated in Paragraph (b)(1) of this Section, there shall at the time of issuance thereof, be

paid by the applicant to the Department a fee of Twenty-five Dollars (\$25). Such stamp exemption shall expire one year from date of issue and shall thereafter be annually renewed at the option of the exemption holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department and payment of the Twenty-five Dollars (\$25) annual renewal fee.

##### (c) Reporting.

(1) Each holder of a stamp exemption shall file with the Department a report within fifteen (15) days after the expiration of each two-month period. Such report shall be made under oath by the owner or official of the registrant that the information therein is true to his best knowledge and belief and shall show the exact number of articles of bedding sold in or into the State of Texas during the said two-month period. The registrant shall remit with said report an amount of money computed as follows: The sum of one cent (1¢) for each article of bedding sold in or into the State of Texas during said report period. The first report required by this Section shall be for the period September 1, 1967, through October 31, 1967.

(2) The requirement for reporting as set out in Paragraph (c)(1) of this Section shall apply to each holder of a stamp exemption who makes or causes to be made the initial sale of an article of bedding in or into the State of Texas.

(3) Each holder of a stamp exemption shall keep accurate records of all articles of bedding manufactured, renovated and sold in or into the State of Texas. The Department shall have the authority to verify necessary shipping records when a registrant fails to make a report as required by Paragraph (c)(1) of this Section or when such report is unsatisfactory for purposes of determining the correct payment due from said registrant.

(4) In case of default in payment, failure to report or evidence of false reporting the registrant shall automatically forfeit his stamp exemption. Any exemption which has been revoked or forfeited as the result of a failure to comply with any of the provisions of the Act or the regulations of the Department shall not be renewed or reissued unless and until the applicant for said exemption presents satisfactory evidence to the Department that he will abide by all provisions of the Act and all rules and regulations promulgated under the Act.

##### (d) Exceptions.

Processors of filling materials shall be excluded from the stamping, exemption and reporting requirements as set out in Paragraphs (a), (b) and (c) of this Section, but each processor shall be required to identify

any shipment or delivery, however contained, of processed filling materials used for filling articles of bedding by affixing thereto in a conspicuous place a tag, label or indelible marking which clearly indicates the kind of material, whether the material is new or secondhand and the permit number of the processor.

Proceeds Placed in General Fund

Sec. 8. All moneys obtained from the sale of stamps, fees and other moneys collected in the administration of this Act shall be payable to the Department, and when collected shall thereafter be transmitted to the State Treasury and be placed in the General Fund and be appropriated out in such amounts that may be deemed necessary by the Legislature. In the administration of this enactment the Regular Departmental Appropriation Bill will be adopted.

Expenditure of Moneys

Sec. 8c. The expenditure of any moneys under this Act shall never exceed the amount of money obtained from the collection of money required by any fee, permit, license or registration required by the provisions of this Act.

Penalties

Sec. 9. Every person who violates any of the provisions of this Act and the rules and regulations established thereunder, is guilty of a misdemeanor and punishable for each offense by a fine of not less than Fifty Dollars (\$50) and not more than Two Hundred Dollars (\$200).

Sanitary Premises

Sec. 10. Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

Exceptions

Sec. 11. The provisions of this Act shall apply to all bedding manufactured, repaired, renovated and/or sold after the effective date hereof; but the same shall not apply to bedding; which has been manufactured, repaired or renovated prior to the effective date hereof.

[Acts 1939, 46th Leg., p. 376; Acts 1949, 51st Leg., p. 918, ch. 497, §§ 1 to 5; Acts 1955, 54th Leg., p. 578, ch. 192, §§ 1, 1-a, 2; Acts 1957, 55th Leg., p. 207, ch. 95, § 1; Acts 1959, 56th Leg., p. 126, ch. 74, §§ 1, 2; Acts 1961, 57th Leg., p. 262, ch. 137, § 1; Acts 1967, 60th Leg., p. 572, ch. 260, §§ 1 to 5, eff. May 22, 1967.]

The introductory clause of Acts 1967, 60th Leg., p. 572, ch. 260, § 1 purports to amend "Section 1 of Senate Bill No. 200, General Laws of the 46th Legislature, Regular Session, page 376, 1939, as amended by Chapter 297, Acts of the 51st Legislature". The reference to "Chapter 297" probably should read "Chapter 497".

Acts 1967, 60th Leg., p. 572, ch. 260, which amended various sections of this article, provided in sections 6 and 7:

"Sec. 6. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of conflict only.

"Sec. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remaining provisions which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable."

CHAPTER FOUR. SANITARY CODE

Article  
4477. Sanitary Code.

QUARANTINE AND DISINFECTION

- Rule
1. Physician to Report.
  2. "Local Health Authority."
  3. "Contagious Diseases."
  4. Health Officers to Keep Record.
  5. Rules to Quarantine and Disinfection.
  6. Disinfection.
  7. Health Authority Shall Placard all Houses Where Contagious Diseases Exist.
  8. Going To or Leaving Quarantined Premises.
  9. Person Exposed to Diseases Shall Obey Authority.
  10. Certain Persons Not Allowed on Thoroughfares.
  11. Placard Not to be Destroyed or Removed.
  12. Quarantinable Pestilential Disease.
  13. Dangerous Contagious Diseases; Modified Quarantine.
  14. Non-quarantinable Contagious Disease.
  15. Quarantinable for School Purposes.
  16. Minor Diseases to be Excluded During Illness.
  17. Rules Not Exclusive.
  18. Authorities to Investigate Reported Cases.
  19. Shall See That Quarantine and Disinfection is Carried Out.
  20. Premises to be Disinfected Before Re-occupied.
  21. Placard Premises on Failure to Disinfect.
  22. Nurses to Report Redness of Eyelids or Inflammation.
  23. Householders to Report Contagious Diseases.
  24. Employés with Reportable Diseases.
  25. To Send Physician Printed Matter.
  26. Persons Excluded From Schools.
  27. Schools Temporarily Closed.
  28. School to Open After Disinfection.
  29. To Notify Superintendents of Pupils from Infected Houses.
  30. Children with Diseases Shall Not Attend School.
  31. Health Authorities to Assume Control of Quarantine.
  32. These Rules Not to Prevent Local Rules.
  33. Authorities May Pass Through Quarantine Lines.

VITAL STATISTICS

34. Repealed.
- 34a. State Department of Health.
35. Repealed.
- 35a. State Health Officer and Registrar of Vital Statistics.
36. Repealed.
- 36a. Registration Districts.
37. Repealed.
- 37a. Local Registrar.
38. Repealed.
- 38a. Dead Bodies.
39. Repealed.
- 39a. Report of Stillborn.
40. Repealed.
- 40a. Death Certificates.
41. Repealed.
- 41a. Death Without Medical Attendance.
42. Repealed.
- 42a. Undertaker's Certificate.
43. Repealed.
- 43a. Form of Burial-transit Permit.
44. Repealed.
- 44a. Report as to Interment.
45. Repealed.
- 45a. Births.
46. Repealed.
- 46a. Birth Certificates.
47. Repealed.

**Rule**

- 47a. Form and Contents of Birth Certificates; Supplementary Certificate; Certificates of Adoption, Annulment and Revocation.
- 47b. Transfer of Item Relating to Legitimacy Status of Person on Certificate of Birth.
- 48. Repealed.
- 48a. Child's Name.
- 49. Repealed.
- 49a. Registration of Physicians, Midwives and Undertakers.
- 50. Repealed.
- 50a. Record of Inmates of Hospitals and Institutions.
- 50b. Marriage License Application.
- 50c. Reporting of Divorces and Annulments of Marriage.
- 51. Repealed.
- 51a. Blanks and Registration Forms; Index of Births and Deaths; Records; Transcripts; Fees; Delayed Registrations; Judicial Procedure to Establish Facts of Birth.
- 52. Repealed.
- 52a. Duties of Local Registrars.
- 53. Repealed.
- 53a. Fees.
- 54. Repealed.
- 54a. Copies of Records.
- 55. Repealed.
- 55a. Reports of Violations of Act.
- 56 and 57. Repealed.

**DEPOTS, COACHES AND SLEEPERS**

- 58. Diseases Barred From Public Vehicles.
- 59. Ventilation and Heat.
- 60. Cuspidors.
- 61. Dry Cleaning Prohibited.
- 62. Coaches.
- 63. Railway Stations.
- 64. Parlor, Buffet and Dining Cars.
- 65. Interurban and Street Cars.
- 66. Sleeping Cars.
- 67. Record of Disinfection.
- 68. Water Coolers.
- 69. Expectorating on Floors.
- 70. Expectorating in Basins.
- 71. Separate Compartment for Porter.
- 72. Repealed.
- 73. Certain Floor Covering Prohibited.
- 74. Water Closets.
- 75. Railway Premises Shall be Drained.
- 76. Water Containers Screened.

**TRANSPORTATION OF DEAD BODIES**

- 77 to 86. Repealed.

**Article**

- 4477a. Amended and Duplicate Birth Certificates for Correction of Errors.
- 4477b. Penalty for Violating Rule of Sanitary Code Relating to Vital Statistics.
- 4477c. Penalty for Birth or Death Information Violations.
- 4477d. Penalty for Violating Other Sanitary Code Provisions.

**Art. 4477. Sanitary Code**

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the

proper enforcement of quarantine, isolation and control of such diseases, to wit:

**QUARANTINE AND DISINFECTION**

**Rule 1. Physician to Report.**—Every physician in this State shall report in writing or by an acknowledged telephone communication to the local health authority, immediately after his or her first professional visit, each patient he or she shall have or suspect of suffering with any contagious disease. If such disease is of a pestilential nature, he shall notify the President of the State Board of Health at Austin by telegraph or telephone at State expense, and report to him every death from such disease immediately after it shall have occurred. The attending physician is authorized to and he shall place the patient under restrictions of the character described herein in the case of each respective disease.

**Rule 2. "Local Health Authority."**—For the purpose of these regulations, the term "local health authority" shall be held to designate the city or county health officer, or local board of health, within their respective jurisdictions.

**Rule 3. "Contagious Diseases."**—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebro-spinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, and anthrax.

**Rule 4. Health Officers to Keep Record.**—City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the State Board of Health. They shall also make a monthly report of all contagious diseases of which they may be cognizant, to the Chairman of the State Board of Health, before the fifth of the following month, upon blank forms provided by the State Board of Health.

**Rule 5. Rules to Quarantine and Disinfection.**—The following rules of instruction for the regulation of quarantine, isolation and disinfection in the several contagious diseases, hereinbefore mentioned, are to be observed by all boards of health, health officers, physicians, school superintendents and trustees, and others. All health authorities of counties, cities, and towns in this State are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection as hereinafter provided for, of all such infected persons, vehicles or premises which are infected or are suspected of being infected with any of the above named diseases whenever found.

(a) Absolute quarantine includes, first, absolute prohibition of entrance to or exit from the building or conveyance except by officers or attendants authorized by the health authorities, and the placing of guards if necessary to enforce this prohibition; second, the posting of a warning placard stating "contagious disease," in a conspicuous place or places on the outside of the building or conveyance; third, the prohibition of the passing out of any object or material from the quarantined house or conveyance; fourth, provision for conveying the necessaries of life under careful restrictions to those in quarantine.

(b) Modified quarantine includes prohibition of entrance and exits, and in absolute quarantine except against certain members of the family authorized by the health authorities to pass in and out under certain definite restrictions; the placing of a placard as before; isolation of patient and attendant; prohibition of the carrying out of any object or material unless the same shall have been thoroughly disinfected.

(c) Absolute isolation includes, first, the confinement of the patient and attendants to one apartment or suite of apartments, to which none but authorized officers or attendants shall have admission; second, screening of room and entire house if necessary with not less than 16-mesh wire gauze; third, the prohibition of passing out of the sick room of any object or material until the same has been thoroughly disinfected; fourth, protection of the air of the house by hanging a sheet, kept constantly moist with a disinfectant solution, over the doorway of the patient's room or rooms and reaching from the top of the door; fifth, if in the opinion of the local health authority the patient can not be treated, with reasonable safety to the public, at home, the removal of the patient and exposures to a contagious disease hospital or pest house.

(d) Modified isolation includes the confinement of the patient and attendants to one room or suite of rooms, to which none but authorized officers or attendants shall have admission, but allowing the attendants to pass out of the room after disinfection of person and complete change of clothing; screening as above mentioned; the prohibition of passing any object or material out of the sick room until it has been disinfected; protection of the doorway as before.

(e) Special isolation includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

(f) By complete disinfection is meant disinfection during illness, under direction of attending physician, of patient's body, of all excretions or discharges of patient and of all articles of clothing and utensils used by patient, and after recovery, death or removal, the disinfection of walls, woodwork, furniture, bedding, etc.

(g) By partial disinfection is meant disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

**Rule 6. Disinfection.**—All disinfection prescribed in these regulations shall be a part of the control of the disease, and shall be done according to the direction of the Texas State Board of Health in its circular on disinfection.

**Rule 7. Health Authority Shall Placard all Houses Where Contagious Diseases Exist.**—Upon notice that smallpox, diphtheria, scarlet fever, or other quarantinable disease exists within his jurisdiction, it shall be the duty of the local health authority to have the house in which such disease prevails placarded by placing a yellow flag or card not less than eight inches wide and twelve inches long with the words "contagious disease" and the quarantine regulations printed thereon in a conspicuous place on said house.

**Rule 8. Going To or Leaving Quarantined Premises.**—After the house is flagged or placarded, all persons except the attending physician or health officer are forbidden from going in or leaving such premises, without the permission of the local health authority, and the carrying off, or causing to be carried off, of any material whereby such disease may be conveyed, is prohibited until after the disease has abated and the premises, dwelling and clothing have been disinfected and cleaned as the local health authority may direct.

**Rule 9. Person Exposed to Diseases Shall Obey Authority.**—It shall be the duty of all persons infected with any contagious disease, or who, from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any health authority of the State, in order to prevent the spread of such contagious disease, and it shall be lawful for such health authorities to command any person thus infected or exposed to infection to remain within designated premises for such length of time as such authority may deem necessary.

**Rule 10. Certain Persons Not Allowed on Thoroughfares.**—All persons having any quarantinable disease are prohibited from riding on any public vehicle or conveyance, and from being upon public thoroughfares or in public assemblages.

**Rule 11. Placard Not to be Destroyed or Removed.**—No person shall alter, deface, remove, destroy or tear down any card posted by a local

health authority. The occupant or person having possession or control of a building upon which a quarantine notice has been placed shall within twenty-four hours after the destruction or removal of such notice by other than the proper health authority, notify the local health authority of such destruction or removal.

**Rule 12. Quarantinable Pestilential Disease.**—In the management and control of the following pestilential diseases: cholera, plague, typhus fever and yellow fever, the house must be placarded, premises placed in absolute quarantine, patient in absolute isolation and a complete disinfection done upon death or recovery taking place.

**Rule 13. Dangerous Contagious Diseases; Modified Quarantine.**—In the management and control of leprosy, smallpox, scarlet fever (scarletina) [scarlatina], diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

**Rule 14. Non-quarantinable Contagious Disease.**—The management and control of typhoid fever, cerebro-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), and anthrax require special isolation and partial disinfection.

**Rule 15. Quarantinable for School Purposes.**—Persons suffering from measles, whooping cough, mumps, German measles (rotheln) and chicken pox, shall be required to be barred from school for twenty-one days (at the discretion of the local health officer) from date of onset of the disease, with such additional time as may be deemed necessary; and may be readmitted on a certificate by him attesting to their recovery and non-infectiousness.

**Rule 16. Minor Diseases to be Excluded During Illness.**—Those actually suffering from tonsillitis, scabies (itch), impetigo contagiosa, favus, shall be excluded from school during such illness and be readmitted on the certificate of the attending physician attesting to their recovery and non-infectiousness.

**Rule 17. Rules Not Exclusive.**—The above requirements shall in no sense be construed as abrogating any additional precautionary measures enforced by local health authorities, but it is expected that additional restrictive measures will be taken at the discretion of the local health authority when the necessity arises, more especially in the more densely populated cities and towns, or when violations of quarantine occur.

**Rule 18. Authorities to Investigate Reported Cases.**—Whenever a local health authority is informed or has reason to suspect that there is a case of smallpox, scarlet fever, or other reportable disease within the territory over which he has jurisdiction, he shall immediately

examine into the facts of the case and shall adopt the quarantine or employ the sanitary measures as herein provided.

**Rule 19. Shall See That Quarantine and Disinfection is Carried Out.**—Within his jurisdiction, each and every local health authority shall see that the quarantine or disinfection of any house, building, car, vessel, or vehicle, or any part thereof, and of any articles therein likely to retain infection, is carried out, and that all persons who have been in quarantine are required to take a disinfecting bath before the same are released. In the event of the disease having been smallpox, all persons exposed shall be isolated for eighteen days from the time of last exposure unless successfully vaccinated.

**Rule 20. Premises to be Disinfected Before Re-occupied.**—No person shall offer for hire or case or permit any one to occupy apartments, previously occupied by a person ill with smallpox, scarlet fever, diphtheria, or any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority.

**Rule 21. Placard Premises on Failure to Disinfect.**—Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the apartment or premises a placard as follows: "These apartments have been occupied by a patient suffering with a contagious disease and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of the law, except by an authorized health official."

**Rule 22. Nurses to Report Redness of Eyelids or Inflammation.**—Whenever any nurse, midwife or other person not [a] legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority or in his absence, any reputable physician, within twelve hours of the time the disease is first noticed.

**Rule 23. Householdors to Report Contagious Diseases.**—Every hotel proprietor, keeper of a boardinghouse or inn, and householder or head of a family in a house wherein any case of reportable contagious disease may occur, shall report the same to the local health authority within twelve (12) hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be

## Rule 23

removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local authority.

**Rule 24. Employés with Reportable Diseases.**—No person who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment.

**Rule 25. To Send Physician Printed Matter.**—Immediately after being notified of any case of smallpox, scarlet fever, diphtheria, or typhoid fever, the local health authority shall send to the attending physician, or with his approval directly to the patient the printed matter published by the State Board of Health relative to the prevention and control of such diseases.

**Rule 26. Persons Excluded From Schools.**—Persons afflicted with trachoma, granulated lids, or contagious catarrhal conjunctivitis must be excluded from schools, public assemblages, and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided, said certificate to be countersigned by a local health authority.

**Rule 27. Schools Temporarily Closed.**—A schoolhouse wherein a child suffering from smallpox, scarlet fever or diphtheria has been present, shall be deemed infected and must be temporarily closed and thoroughly disinfected and cleaned under the supervision of the local health authority before reopening of the school.

**Rule 28. School to Open After Disinfection.**—In the event of the aforementioned disease being smallpox and in the case the Board of Trustees having passed a regulation requiring a successful vaccination of all teachers and pupils, the school may be reopened immediately after the disinfection and cleaning, and all teachers and pupils who have been successfully vaccinated may return; otherwise the school shall be kept closed eighteen days or until the local health authority directs otherwise.

**Rule 29. To Notify Superintendents of Pupils from Infected Houses.**—The local health authority shall notify the superintendent or principal of any school of the location of quarantinable diseases, and if the superintendent or principal finds any attendants in such school who live in said houses, he shall deny them admission to the said schools, only admitting them again upon presenting a certificate from the attending physician, countersigned by the local health authority, that there is no longer danger from contagion.

**Rule 30. Children with Diseases Shall Not Attend School.**—No superintendent, principal or teacher of any school, and no parent, master or guardian of any child or minor, having the power and authority to prevent, shall permit any child or minor, having any quarantinable disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public, private, parochial, church or Sunday school until the requirements of these rules have been complied with.

**Rule 31. Health Authorities to Assume Control of Quarantine.**—In all incorporated cities and towns the city health authorities shall assume control and management of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided. In those portions of all counties outside of incorporated cities and towns the county health officer shall assume management and control of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided.

**Rule 32. These Rules Not to Prevent Local Rules.**—These regulations shall not be construed to prevent any city, county or town from establishing any quarantine which they deem necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of these regulations and be subordinate to said provisions, and the rules and regulations prescribed by the Governor and State Board of Health. The local health authority shall at once furnish the President of the State Board of Health with a true copy of any quarantine orders and regulations adopted by said local authorities.

**Rule 33. Authorities May Pass Through Quarantine Lines.**—All health authorities shall be allowed to pass through all quarantine lines, whether instituted at the instance of State or local authorities, they first requesting permission and acquainting the officers or guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves.

## VITAL STATISTICS

**Rule 34.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 34a. State Department of Health.**—The State Department of Health shall have charge of the registration of vital statistics; shall establish a Bureau of Vital Statistics with suitable offices properly equipped for the preservation of its official records; shall install a state-wide system of vital statistics; shall make and may amend necessary regulations, give instructions and prescribe forms for collecting, recording, transcribing, compiling and preserving vital statistics; shall require

the enforcement of the Vital Statistics Law and the regulations made pursuant thereto; shall in time of emergency be authorized to suspend any part or parts of the Vital Statistics Law which tend to hinder or impede uniform and efficient registration of vital events and substitute therefor emergency regulations designed to expedite such registration under disaster conditions; and shall from time to time recommend any additional legislation that may be necessary for this purpose.

**Rule 35.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41 § 24.

**Rule 35a. State Health Officer and Registrar of Vital Statistics.**—The State Health Officer shall have general supervision over the central Bureau of Vital Statistics, and shall appoint the director of the Bureau of Vital Statistics, who shall be a competent vital statistician, and who shall be the State Registrar of Vital Statistics.

**Rule 36.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41 § 24.

**Rule 36a. Registration Districts.**—For the purposes of this Act<sup>1</sup> the State shall be divided into primary registration districts as follows: Each justice of the peace precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a primary registration district, provided the State Board of Health may combine two (2) or more registration districts, or may divide a primary registration district into two (2) or more parts, so as to facilitate registration, and in the justice of the peace precinct, the justice of the peace shall be local registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census, the city clerk or city secretary shall be the local registrar of births and deaths.

It is hereby declared to be the duty of the justice of the peace in the justice of the peace precinct, and the city clerk or city secretary in the city of two thousand, five hundred (2,500) or more population to secure a complete record of each birth, death, and stillbirth that occurs within their respective jurisdictions.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 37.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41 § 24.

**Rule 37a. Local Registrar.**—Every Local Registrar shall select a Deputy-Registrar to the end that at all times a Registrar may be available for the registration of births and deaths, and all reports made to the Bureau of Vital Statistics shall be over the signature of the Local Registrar.

In any district where the Local Registrar fails or refuses to secure the registration of all births and deaths in his district, or neglects to discharge the duties of his office as set forth in this Act,<sup>1</sup> the State Board of Health shall

declare that district to be without a Local Registrar of Births and Deaths, and shall, with the confirmation of the County Judge or the City Mayor, as the case may be, appoint a Local Registrar of Births and Deaths for that District.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 38.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41 § 24.

**Rule 38a. Dead Bodies.**—(a) When a death or stillbirth occurs outside this State, a burial-transit permit issued in accordance with the law and regulations in force where the death or stillbirth occurred shall authorize the transportation of the body into or through this State, and further such permit shall be accepted by any cemetery or crematory as authorization for burial, cremation, or other disposal of the body in this State.

(b) The State Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies, to such extent as may be reasonable and necessary for the protection of the public health and safety.

**Rule 39.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41 § 24.

**Rule 39a. Report of Stillborn.**—Subject to the regulations of the State Department of Health, a certificate of each stillbirth which occurs in this state shall be filed with the local registrar of the district in which the stillbirth occurred, and if the place of stillbirth is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of stillbirth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of stillbirth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures:

(a) Personal data shall be supplied by the person best qualified to supply them;

(b) Except as otherwise provided, the medical certification shall be made by the person in attendance at the stillbirth. Stillbirths occurring without attendance shall be treated as deaths without medical attendance as provided in Rule 41a, Article 4477, Revised Civil Statutes of Texas. The certificate of stillbirth shall be filed in the same manner as a certificate of death.

**Rule 40.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.



## Rule 40a

**Rule 40a. Death Certificates.**—A certificate of each death which occurs in this State shall be filed with the local registrar of the district in which the death occurred, and if the place of death is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures:

(a) Personal data shall be supplied by a competent person having knowledge of the facts,

(b) Except as otherwise provided, the medical certification shall be made by the physician, if any, last in attendance on the deceased. If the deceased shall have rendered service in any way,<sup>1</sup> campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or who at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any war, campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the funeral director or person having charge of the disposition of the body shall show the following facts on the reverse side of the death certificate: the organization in which service was rendered, the serial number taken from the discharge papers or the adjusted service certificate, the name and post office address of the next of kin or next friend of the deceased. And provided that when such a death certificate is filed, the local registrar shall immediately notify the nearest Congressionally Chartered Veteran Organizations. And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller.

<sup>1</sup> So in enrolled bill. Probably should read "war."

**Rule 41.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 41a. Death Without Medical Attendance.**—In case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall inform the local

health officer and refer the case to him for immediate investigation and certification; provided that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided further, that if the registrar or the local health officer, as the case may be, as<sup>1</sup> in doubt as to the cause of death, or if the case be one otherwise properly referable to a Justice of the Peace for inquest into the cause of death, he shall then refer the case to a proper Justice of the Peace for inquest, investigation, and certification. And the Justice of the Peace or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death shall state in his certificate the name of the disease causing death, or, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death; provided, further, that when a death of any person not a resident of that district, or unknown in that district, occurs, the Justice of the Peace or person acting as coroner shall secure the finger prints of the deceased and the following physical marks of identification:

(a) Color of hair

(b) Color of eyes

(c) Height

(d) Weight

(e) Deformities

(f) Tattoo marks

(g) Such other facts as set forth by the State Board of Health as will be of assistance in identifying the deceased.

The finger prints and the physical identification marks shall be placed on a form prescribed by the State Board of Health, and shall be attached to the death certificate. The State Registrar shall forward to the State Department of Public Safety the report showing the finger prints and other physical marks of identification.

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

**Rule 42.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 42a. Undertaker's Certificate.**—That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred; provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall

then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 and 8.<sup>1</sup> And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar.

<sup>1</sup> Rules 40a, 41a.

**Rule 43.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 43a. Form of Burial-transit Permit.**—The standard burial-transit permit shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health.

**Rule 44.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 44a. Report as to Interment.**—The person in charge of any premises on which interments are made shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker and such other information as the state registrar may direct; which record shall at all times be open to official inspection.

**Rule 45.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 45a. Births.**—That the birth of each and every child born in this state shall be registered as hereinafter provided.

**Rule 46.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 46a. Birth Certificates.**—That within five days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Department of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 of this Act.<sup>1</sup>

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to

report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in Section 14 of this Act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

<sup>1</sup> Rule 47a of this article.

**Rule 47.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 47a. Form and Contents of Birth Certificates; Supplementary Certificate; Certificates of Adoption, Annulment and Revocation.**—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. Provided that the name of the father, or any information by which he might be identified, shall not be written into the birth or death certificate of any illegitimate child; and provided further, that any statement that the father of an illegitimate child wishes to make as to its parentage may, when placed in the form of an affidavit, be attached to the original birth record. The state registrar, county clerk, or local registrar shall not issue a certified copy disclosing illegitimacy or otherwise disclose illegitimacy unless the issuance of the certified copy or the disclosure is authorized by order of the county court of the county in which the birth, death, or fetal death occurred.

Subject to the regulations of the State Department of Health, any person:

(a) legitimated by the subsequent marriage of its parents;

(b) whose parentage has been determined by a court of competent jurisdiction; or

(c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted.

## Rule 47a

The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

**Rule 47b. Transfer of Item Relating to Legitimacy Status of Person on Certificate of Birth.**—The item as to the legitimacy status of a person shall be included in the section entitled "For Medical and Health Use Only" of the standard certificate of birth. The section entitled "For Medical and Health Use Only" shall

not be considered a part of the legal certificate of birth.

**Rule 48.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 48a. Child's Name.**—That when any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

**Rule 49.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 49a. Registration of Physicians, Midwives and Undertakers.**—That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this Act,<sup>1</sup> together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, and undertakers or persons who have acted as such who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by the local registrars to physicians, midwives, or undertakers or persons acting as such for registering their names under this section or making returns thereof to the state registrar.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 50.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 50a. Record of Inmates of Hospitals and Institutions.**—That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this Act,<sup>1</sup> which are required in the forms of the certificates provided for by this Act, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they can not be so obtained, they shall be obtained in as complete a

manner as possible from relatives, friends, or other persons acquainted with the facts.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 50b. Marriage License Application.—**

(a) After January 1, 1966, the county clerk in each county in this state shall file without fee a copy of each completed application for marriage license with the Bureau of Vital Statistics of the State Department of Health within 90 days after the date of the application.

(b) The Bureau of Vital Statistics shall establish and maintain a consolidated state-wide alphabetical index of all applications for a marriage license based upon the names of both parties. The state-wide index does not take the place of the indexes required in each county.

(b-1) After December 31, 1969, the county clerk of each county shall transmit to the Bureau of Vital Statistics, within 90 days after execution, a copy of each declaration of informal marriage executed under Section 1.92 of the Family Code. The Bureau shall incorporate the information in each declaration in the state-wide alphabetical index established under Subsection (b) of this section, and the information shall be treated as provided in Subsection (c) of this section.

(c) The Bureau of Vital Statistics shall upon request furnish any information it has on record pertaining to the marriage of any person, but the Bureau shall not issue any certificate or certified copies of the information. The Bureau may charge a fee of one dollar for the information it gives relating to any person under this Section. All fees collected under this Section shall be deposited in the State Treasury to the credit of the Vital Statistics Fund.

**Rule 50c. Reporting of Divorces and Annulments of Marriage.—**(a) The State Bureau of Vital Statistics shall adopt a form for the reporting of divorces and annulments of marriage, which form shall provide for the following items of information:

(1) the full names of the parties, their usual residences, their ages, their places of birth, their color or race, and the number of children, date and place of marriage.

(2) the date of the granting of the divorce or annulment of marriage, the style and docket number of the case, and the court in which the divorce or annulment of marriage was granted.

(b) The State Bureau of Vital Statistics shall furnish sufficient copies of the form to each district court clerk.

(c) When a final judgment for a divorce or annulment of marriage is presented to the court for a final decree the attorney shall enter the above-listed items of information regarding the parties on the report of divorce or annulment of marriage form prescribed by the State Bureau of Vital Statistics, and such form shall be submitted to the district court clerk with the final judgment.

(d) Before the 10th of each month the district court clerk shall file with the State Bureau of Vital Statistics a completed form for each divorce or annulment of marriage granted in the district court during the preceding calendar month.

(e) For each report of divorce or annulment of marriage filed with the State Bureau of Vital Statistics, the district court clerk shall receive a fee of \$1.00 which is to be taxed as costs in each case in which a divorce or annulment of marriage is granted.

(f) The State Bureau of Vital Statistics shall establish and maintain a consolidated statewide alphabetical index of all divorce and annulment of marriage forms based upon the names of both parties.

(g) The state registrar shall, upon request, furnish to any applicant any information he has on record pertaining to any divorce or annulment of marriage, but he shall not issue certified copies of reports of divorces or annulments of marriages. The state registrar shall charge the applicant a fee of \$1.00 for searching the statewide index of divorces and annulments of marriages, and all fees collected under this section shall be deposited in the state treasury to the credit of the Vital Statistics Fund.

(h) The provisions of this section shall apply to all petitions for divorce or annulment of marriage filed on and after January 1, 1968.

**Rule 51.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 51a. Blanks and Registration Forms; Index of Births and Deaths; Records; Transcripts; Fees; Delayed Registrations; Judicial Procedure to Establish Facts of Birth.—**

A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State De-

partment of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

#### B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

1. An application to file a delayed certificate of the birth of a person born in this state, and not previously registered as provided by law, shall be made to the State Registrar of Vital Statistics.

2. When the birth occurred more than five days but less than one year prior to the application for registration, the birth may be registered on a certificate of live birth and be submitted for filing to the local registrar of the district in which the birth occurred. The local registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the lo-

cal registrar. A statement may be required to explain the delay in filing the certificate.

3. When the birth occurred one year but less than four years prior to the application for registration, the birth shall be registered on a form prescribed by the State Registrar of Vital Statistics and shall be submitted to him for filing. The State Registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the State Registrar. A statement may be required to explain the delay in filing the certificate. Each certificate thus filed shall be marked "Delayed."

4. When the birth occurred four or more years prior to the application for registration, the certificate of birth shall be prepared on a form entitled "Delayed Certificate of Birth," which form shall be prescribed and furnished by the State Department of Health. The information provided on such registration form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When such person is not competent to swear to this information, it shall be subscribed and sworn to by a parent, legal guardian, or the representative of such person.

a. The form shall provide for the name and sex of the person whose birth is to be registered, and place and date of birth, the names of the parents, and their birthplaces; and such other information as may be required by the State Registrar.

b. When the certificate is submitted, the State Registrar shall add a description of each document submitted in support of the delayed registration including the title or kind of document; the name and address of the affiant if the document is an affidavit of personal knowledge, or of the custodian, if the document is a record of a business entry or a certified copy thereof; the date of the original entry and the date of the certified copy; and

c. The certification of the State Registrar shall be added to those certificates accepted for filing. The State Registrar shall issue certified copies of such certificates in accordance with the provisions of Section 21 of this Act.<sup>1</sup>

5. The State Registrar shall accept the registration if the applicant was born in this state and if the applicant's statement of date and place of birth and parentage is

established to the satisfaction of the State Registrar by the following evidence:

a. If the birth occurred four years but less than fifteen years prior to the date of filing:

(1) The statement of date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

b. If the birth occurred fifteen or more years before the date of filing:

(1) The statement of date and place of birth shall be supported by at least three documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

(3) Any document accepted as evidence, other than an affidavit of personal knowledge, shall be at least five years old. A copy or abstract of such document may be accepted if certified as true and correct by the custodian of the document.

6. When an applicant does not submit the documentary evidence as specified above, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate, but shall furnish the applicant with a statement of the reasons for such action, and shall advise the applicant of his right to appeal to the county court for probate matters of the county of birth as provided in Subsection C of this Section.

7. A certificate of birth registered one year or more after the date of birth shall show on its face the date of the registration and shall be marked "Delayed."

8. If an application for a delayed registration of birth is not actively prosecuted, the State Registrar shall return the application, supporting evidence, and any related instruments to the applicant or make such other disposition thereof as the State Registrar may deem appropriate.

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee of Three Dollars (\$3.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.<sup>1</sup>

C. Judicial Procedure to Establish Facts of Birth.

1. If a delayed certificate of birth is not accepted by the State Registrar under the provisions of Subsection B of this Section, a petition may be filed with the county court for probate matters of the county in which the birth occurred for an order establishing a record of the date of birth, place of birth, and parentage of the person whose birth is to be registered.

2. Such petition shall be made on a form prescribed and furnished by the State Department of Health.

3. The petition shall be accompanied by a statement of the State Registrar issued in accordance with Subsection B(6) of this Section and all documentary evidence which was submitted to the State Registrar in support of such registration.

4. If the court, from the evidence presented, finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the date and place of birth and parentage and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the State Department of Health to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

5. The fees of the court shall be the same as those set out in Articles 3925 and 3930, Vernon's Texas Civil Statutes.

6. The clerks of the courts shall forward each such order to the State Registrar within seven days after it was entered. Such order shall be registered by the State Registrar and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of Section 21 of this Act.<sup>1</sup>

D. Delayed Registration of Deaths.

Any person wishing to file the record of any death occurring in Texas and not previously registered may submit to the county court for probate matters of the county in which the death occurred a record of that death, written on the adopted form of death certificate. The certificate shall be substantiated by the affidavit of the physician last in attendance upon the deceased, or the funeral director who buried the body. When the affidavit of the physician or funeral director cannot be secured, the certificate shall be supported by:

(a) the affidavit of some person who was acquainted with the facts surrounding the death, at the time the death occurred; and

(b) the affidavit of some person who was acquainted with the facts surrounding the death, and who is not related to the deceased by blood or marriage.

Provided that when application is made as provided in this paragraph, a fee of One Dollar (\$1.00) shall be collected by the court, Fifty

## Rule 51a

Cents (50¢) of which shall be retained by the court, and Fifty Cents (50¢) of which shall be retained by the clerk of the court for recording said death certificate. Within seven (7) days after the certificate has been accepted and ordered filed by the court, the clerk of that court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the certificate be accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act.<sup>1</sup> Such certified copies shall be prima facie evidence in all courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose.

<sup>1</sup> Rule 54a of this article.

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930 (including subsec. D. of this rule), see note under article 3930.*

**Rule 52.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 52a. Duties of Local Registrars.**—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,<sup>1</sup> to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month,

transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

<sup>1</sup> Rule 51a of this article.

**Rule 53.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 53a. Fees.**—That each local registrar shall be paid the sum of Fifty Cents (50¢) for each birth, death, and stillbirth certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Bureau of Vital Statistics, as required by this Act,<sup>1</sup> unless such local registrar shall be acting as registrar in an incorporated city where the compensation of the registrar is otherwise fixed by city ordinance.

The State Registrar shall annually certify to the county commissioners court or county auditor, as the case may be, the number of birth, death and stillbirth certificates filed by each local registrar at the rate fixed herein, and provided that the State Registrar may render such statements monthly or quarterly, at the discretion of the State Board of Health, and the commissioners court or county auditor, as the case may be, shall audit such statement and the county treasurer shall pay such fees as are approved by the commissioners court or the county auditor, at the time such statement is issued.

And provided further, that the justice of the peace, city clerk or secretary, and the appointed local registrar shall submit to the commissioners court or county auditor, as the case may be, a true and accurate copy of each birth, death, and stillbirth certificate filed with him, and such copies shall bear his file date and signature and shall be deposited in the county clerk's office, provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate copies of each birth, death, and stillbirth certificate be permanently filed in the office of the city registrar. The county clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the commissioners court.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 54.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 54a. Copies of Records.**—Subject to the regulations of the State Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act,<sup>1</sup> for the making and certification of which he shall be entitled to a fee of Two Dollars (\$2.00) to be paid by the applicant; provided, that such certified copies shall be issued in only such form

as approved by the State Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Two Dollars (\$2.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the State Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Three Dollars (\$3.00) for filing a new birth certificate based on adoption, a fee of Three Dollars and Fifty Cents (\$3.50) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Two Dollars (\$2.00) for filing an amendment to a birth

certificate based on a court order of change of name, said fees to be paid by the applicants.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

Acts 1971, 62nd Leg., p. 879, ch. 111, which by section 1 amended Rule 54a of this article, in section 2 provided: "To provide such time as may be required to adequately publicize such change in fee, this Act shall take effect and be in force on January 1, 1972."

**Rule 55.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 55a. Reports of Violations of Act.—** That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act<sup>1</sup> in his registration district, under the supervision and direction of the state registrar. And he shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the county attorney, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rules 56 and 57.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

#### DEPOTS, COACHES AND SLEEPERS

**Rule 58. Diseases Barred From Public Vehicles.—**No person known to be suffering with any contagious diseases such as smallpox, scarlet fever, diphtheria, measles, or whooping cough shall be allowed to enter or ride in any day coach, sleeping car, interurban car or street car, and when any such person is discovered to be in any car as mentioned above, it shall be the duty of the conductor or other person in charge of said car to notify the nearest or most accessible county or city health officer and the latter shall remove and isolate said patient as is proper in such case.

**Rule 59. Ventilation and Heat.—**Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated,



## Rule 59

and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly uncomfortably cold; and the janitor, conductor or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary and oppressive.

**Rule 60. Cuspidors.**—Cuspidors must be provided in adequate numbers in all waiting rooms of depots and railway stations; each day coach shall be provided with one cuspidor for each seat or every two chairs and two in each smoking apartment, except in each parlor car there may be as few as one cuspidor to every three seats and two cuspidors used in the smoking apartment; in each sleeping car shall be placed one cuspidor to each section and three cuspidors in the smoking apartment, one of which cuspidors, in the absence of a dental lavatory, shall be of an unusually large size and placed near the wash basin for use in washing the teeth; each said cuspidor shall contain not less than one-third of a pint of an approved disinfectant solution, and the cuspidor shall be emptied, washed in a similar solution and replenished each trip or every twenty-four hours.

**Rule 61. Dry Cleaning Prohibited.**—Dry cleaning and dry sweeping is prohibited at all times in waiting rooms of depots and railway stations, or in railway coaches, sleeping cars, interurban cars and street cars.

**Rule 62. Coaches.**—Railway day coaches shall be thoroughly cleaned at the end of each trip, and in no instance shall the day coach go uncleaned longer than two days when such coach is in use; the thorough cleaning of day coaches shall consist as follows:

(a) Windows and doors shall be first opened and the aislestrip, if any, removed and when possible thoroughly sunned.

(b) All upholstery shall be dusted and brushed, using the vacuum process cleaning apparatus whenever possible.

(c) The floor shall be mopped or swept after it has been sprinkled with an approved disinfectant solution or preferably cleaned by sprinkling with sawdust moistened with said disinfectant and sweeping. After cleaning as described, the floor must be scrubbed with soap and water, to which may be added the same disinfectant solution.

(d) Closet floors, urinals, toilet bowls, and walls must be cleaned by washing, scouring and wiping with an approved disinfectant solution, to which soda ash or other cleansing agent may be added.

(e) All arms of seats and window ledges must be wiped free of dust with a damp cloth, preferably one wet with disinfectant solution.

(f) Provided, that where the vacuum cleaning apparatus is installed and coach-

es are thoroughly cleaned with this method daily, the aforementioned method of brushing, cleansing and scrubbing may be used as seldom as once in each period of seven days.

**Rule 63. Railway Stations.**—The sanitary method of cleaning as prescribed in the foregoing rule must be followed in the sanitation of waiting rooms of depots and railway stations once in every twenty-four hours.

**Rule 64. Parlor, Buffet and Dining Cars.**—Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in the article relating to day coaches. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde or other approved disinfectant.

**Rule 65. Interurban and Street Cars.**—Interurban and street cars must be washed with a hose and scrubbed thoroughly once every twenty-four hours, and must be disinfected with formaldehyde gas under the supervision of the local health authority immediately after any case of contagious disease has been discovered therein.

**Rule 66. Sleeping Cars.**—All sleeping cars shall be cleaned at cleaning terminals according to the methods set forth in the article relating to day coaches at least twice during a period of every seven days; shall be disinfected with formaldehyde gas at least twice during a period of seven days; upon routes designated by the President of the State Board of Health all sleeping cars shall be disinfected as seldom as once during a period of seven days. In addition to the foregoing all sleeping cars shall be disinfected immediately after any case of contagious or infectious disease is discovered therein. All blankets used in sleeping cars must be thoroughly sterilized and washed at intervals of not more than ninety days.

**Rule 67. Record of Disinfection.**—On each passenger car operated in this State a disinfection record must be kept and preserved and on same the following records are to be entered and kept:

- (1) place and date of each disinfection;
- (2) length of time devoted to each such thorough disinfection; and
- (3) each item in said record shall be inserted immediately after each act recorded, and the signature of the person or persons doing said cleaning or disinfection must appear beneath the said records.

**Rule 68. Water Coolers.**—All depots, railway coaches, sleeping cars or interurban cars must be provided with a water cooler for the use of patrons and the traveling public; such water cooler must be so constructed as to be easily removed for the purpose of cleaning; must be emptied, rinsed and cleaned, and must be scalded and sunned when possible once in

each period of twenty-four hours, and must be filled with good and wholesome drinking water when in service. Ice for use in water coolers must not be dumped on floors, sidewalks or car platform, but must be washed and must be handled with ice-tongs.

**Rule 69. Expectorating on Floors.**—Expectorating on the floor or walls or furniture of any waiting room in any depot, on any depot platform, in any railway coach, sleeping car, interurban car, or street car is prohibited. Placards calling attention of passengers and employes shall be hung in a conspicuous place in each of the said rooms and cars.

**Rule 70. Expectorating in Basins.**—Brushing of teeth or expectorating in basins used for lavatory purposes is prohibited, and placards calling attention of passengers and employes shall be hung in a conspicuous place in the dressing room of passenger coaches.

**Rule 71. Separate Compartment for Porter.**—Sleeping car companies shall provide compartments and bedding for their porters separate from those provided for their passengers.

**Rule 72.** Repealed by Acts 1969, 61st Leg., p. 615, ch. 209, § 2, eff. Sept. 1, 1969.

**Rule 73. Certain Floor Covering Prohibited.**—No waiting room in any depot or railway station shall be floored in part or entirely with burlap, cocoa matting or sacking cloth.

**Rule 74. Water Closets.**—All depots and railway stations shall provide adequate urinals and water closets for patrons and the traveling public; must keep them in proper sanitary condition, and if within five hundred feet of any public sewer must make permanent sanitary connection with same. Any privy or box closet furnished by such railway company shall be protected from flies by screening or other effective method including hinged lids or other device for covering the opening in the seats of said closets. Such privies and closets as are not in connection with a sanitary sewer shall be provided with a water-tight box or other receptacle underneath, and when full or at any time when its condition shall create a nuisance or become unsanitary, it must be emptied, and in no instance shall such box closet go longer than one month before it must be emptied and disinfected with 5 per cent carbolic acid solution or other approved disinfectant solution.

**Rule 75. Railway Premises Shall be Drained.**—The premises of all depots and railway stations shall be thoroughly drained so that no stagnant water will collect on said premises.

**Rule 76. Water Containers Screened.**—All cisterns, fire water barrels, or other water containers upon the premises of any depot or railway station shall be screened with not less than 16 mesh wire gauze.

#### TRANSPORTATION OF DEAD BODIES

**Rule 77 to 86.** Repealed by Acts 1951, 52nd Leg., p. 128, ch. 79, § 5.

4 West's Tex.Stats. & Codes—33

[Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, §§ 1 to 24; Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, §§ 1 to 5; Acts 1933, 43rd Leg., p. 57, ch. 28; Acts 1935, 44th Leg., p. 441, ch. 179, § 1; Acts 1937, 45th Leg., p. 1289, ch. 480, § 1; Acts 1939, 46th Leg., p. 343, §§ 1, 2; Acts 1939, 46th Leg., p. 346, §§ 1, 2; Acts 1941, 47th Leg., p. 782, ch. 486 §§ 1, 2; Acts 1941, 47th Leg., p. 850, ch. 525, § 1; Acts 1941, 47th Leg., p. 933, ch. 564, § 1; Acts 1943, 48th Leg., p. 112, ch. 83, § 1; Acts 1943, 48th Leg., p. 289, ch. 184, § 1; Acts 1945, 49th Leg., p. 618, ch. 354, § 1; Acts 1947, 50th Leg., p. 145, ch. 369, § 6; Acts 1949, 51st Leg., p. 755, ch. 405, § 1; Acts 1949, 51st Leg., p. 777, ch. 417, § 1; Acts 1951, 52nd Leg., p. 128, ch. 79, §§ 1 to 5; Acts 1951, 52nd Leg., p. 145, ch. 87, §§ 1 to 4; Acts 1951, 52nd Leg., p. 355, ch. 223, §§ 1, 2; Acts 1957, 55th Leg., p. 256, ch. 120, §§ 1, 2; Acts 1957, 55th Leg., p. 532, ch. 249, § 1; Acts 1959, 56th Leg., p. 379, ch. 181, §§ 22 to 27; Acts 1959, 56th Leg., p. 640, ch. 293, § 1; Acts 1959, 56th Leg., p. 737, ch. 359, § 1; Acts 1961, 57th Leg., p. 163, ch. 84, § 1; Acts 1965, 59th Leg., p. 1151, ch. 543, § 2; Acts 1967, 60th Leg., p. 560, ch. 247, § 1; Acts 1969, 61st Leg., p. 815, ch. 209, §§ 1, 2; Acts 1969, 61st Leg., p. 2707, ch. 888, § 4; Acts 1971, 62nd Leg., p. 878, ch. 111, § 1; Acts 1973, 63rd Leg., p. 812, ch. 367, § 1, eff. June 12, 1973.]

#### Art. 4477a. Amended and Duplicate Birth Certificates for Correction of Errors

**Sec. 1.** All State Officials or Officers, or officers or officials of any political subdivision of this State and all other persons having authority to issue birth certificates are hereby required to issue amended birth certificates or duplicate copy of such birth certificate upon application of an offended person where an error has been made in the original draft of the certificate by erroneously inserting the word "Mexican," or any other nationality, under the title of color or race on such birth certificate, and that the actual color or race be inserted in lieu of such erroneously inserted nationality in the space provided for color or race. The provisions of this Act are mandatory and not directory.

**Sec. 2.** This Act is cumulative of all existing laws, except that any law in conflict herewith is hereby repealed, but only to the extent of such conflict.

[Acts 1951, 52nd Leg., p. 376, ch. 240.]

#### Art. 4477b. Penalty for Violating Rule of Sanitary Code Relating to Vital Statistics

Any person who shall violate any rule of the Sanitary Code of this State relating to vital statistics, or who shall fail to perform any duty imposed on him by said rules herein referred to, shall be fined not less than ten nor more than one hundred dollars. Whoever shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death shall be confined in the penitentiary not less than one nor more than two years.

[1925 P.C.]

#### Art. 4477c. Penalty for Birth or Death Information Violations

Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, (a) shall refuse or fail to furnish correctly any information in his possession, or shall furnish false in-

formation affecting any certificate or record, required by this Act; or (b) shall willfully alter, otherwise than is provided by Section 18 of this Act,<sup>1</sup> or shall falsify any certificate of birth or death, or any record established by this Act; or (c) being required by this Act to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act; or (d) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act and by the instructions, and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), and for each subsequent offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned.

[Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 22; Acts 1973, 63rd Leg., p. 814, ch. 367, § 2, eff. June 12, 1973.]  
<sup>1</sup> Article 4477, rule 51a.

**Art. 4477d. Penalty for Violating Other Sanitary Code Provisions**

Whoever shall violate any provision of the Sanitary Code of this State, other than those relating to vital statistics, shall be fined not less than ten nor more than one thousand dollars.

[1925 P.C.]

**CHAPTER FOUR A. SANITATION AND HEALTH PROTECTION**

**Article**

- 4477-1. Minimum Standards of Sanitation and Health Protection Measures.
- 4477-1a. Sewage Discharge into Open Ponds; Cities of 400,000 to 800,000.
- 4477-1b. Sewage Discharge into Open Ponds; San Antonio.
- 4477-2. Mosquito Control Districts.
- 4477-3. Professional Sanitarians.
- 4477-4. Repealed.
- 4477-5. Texas Clean Air Act.
- 4477-5a. Clean Air Financing Act.
- 4477-5b. Air Pollution.
- 4477-6. Renderers' Licensing Act.
- 4477-7. Solid Waste Disposal Act.
- 4477-8. County Solid Waste Control Act.
- 4477-9. Dumping Solid Waste on Property or Into Waters; Penalty.

**Art. 4477-1. Minimum Standards of Sanitation and Health Protection Measures**

**Definitions**

Sec. 1. (a) The following terms wherever found in this Act, unless otherwise defined, shall be understood to mean:

(b) **APPROVED PRIVY:** Any unit for the disposal of human excreta constructed and maintained in conformity with the specifications of the State Department of Health.

(c) **COMMON CARRIER:** Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service. The term "Common Carrier" shall also include any vehicle employed in such transportation service.

(d) **COMMON DRINKING CUP:** Any receptacle used for serving water or other beverage to two or more persons in any public place or any establishment catering to the public; provided this term shall not apply to receptacles properly washed and sterilized after such service.

(e) **DRINKING WATER:** All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleansing of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(f) **HUMAN EXCRETA:** The urinary and bowel discharges of any human being.

(g) **NUISANCE:** Any object, place or condition which constitutes a possible and probable medium of transmission of disease to or between human beings or any other object, place or condition which may be specifically declared by this Act to be a nuisance.

(h) **PUBLIC HEALTH ENGINEER:** Any engineer who has been duly licensed to practice as a registered professional engineer and who is further versed in the sciences of water purification, sewage, treatment, and in the public health principals of conditioning the environment.

(i) **SANITARIAN:** Any trained worker who has a practical knowledge of sanitation as it pertains to disease control.

(j) **SANITARY:** Any condition of good order and cleanliness which precludes the probability of disease transmission.

(k) **SEPTIC TANK:** Any covered watertight tank, designed for the treatment of sewage.

(l) **SEWERAGE PLANT OPERATOR:** Any person, trained in the collection, treatment, or disposal of sewage who has a practical working knowledge of the mechanics, maintenance and operating principles of the collection, treatment, and disposal of sewage.

(m) **SWIMMING POOL:** Any body of water maintained expressly for public recreational purposes, swimming and similar aquatic sports.

(n) **TOILET:** The hopper device for the deposit and discharge of human excreta into a water carriage system.

(o) **TOURIST COURT:** Any camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or any or all trailer units housing human beings.

(p) **WATER PLANT OPERATOR:** Any person trained in the purification or distribution of a public water supply who has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification and who is capable of conducting and maintaining the purification processes in an efficient manner.

(q) **WATER SUPPLY:** Any source or reservoir of water distributed to and used for human consumption.

#### Nuisances

Sec. 2. (a) Any and all of the following conditions are hereby specifically declared to be nuisances dangerous to the public health;

(b) Any condition or place allowed to exist in populous areas which constitutes a breeding place for flies;

(c) Any spoiled or diseased meats intended for human consumption;

(d) Any restaurant, food market, bakery, or other place of business or any vehicle where food is prepared, packed, stored, transported, sold or served to the public which is not constantly maintained in a sanitary condition;

(e) Any place, condition or building controlled or operated by any governmental agency, state or local, which is not maintained in a sanitary condition;

(f) All sewage, human excreta, waste water, garbage, or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in the transmission of disease to or between any person or persons;

(g) Any vehicle or container used in the transportation of garbage, human excreta, or other organic material which is defective and allows leakage or spilling of contents;

(h) Any collection of water in which mosquitoes are breeding within the limits of any city, town or village;

(i) Any condition which may be proven to injuriously affect the public health and which may directly or indirectly result from the operations of any bone boiling, fat rendering, tallow or soap works or other similar establishments;

(j) Any place or condition harboring rats in populous areas;

(k) The presence of ectoparasites (bedbugs, lice, mites, et cetera) suspected to be carriers of disease in any place where sleeping accommodations are offered to the public;

(l) The maintenance of any open surface privy or of any overflowing septic tank, the contents of either of which may be accessible to flies.

#### Abatement of Nuisances

Sec. 3. (a) Every person, possessing any place in or on which there is a nuisance shall, as soon as its presence comes to his knowledge, proceed at once and continue to abate the said nuisance.

(b) Every local health officer who receives information and proof of the existence of a nuisance within his jurisdiction shall issue a written notice to any person responsible for the said nuisance ordering the abatement of same. He shall at the same time send a copy of the said notice to the local city, county, or district attorney. Such notice shall specify the nature of the nuisance and shall designate a reasonable time within which such abatement shall be accomplished. In the event such notice is not complied with within the specified time, the local prosecuting attorney who received the copy of the original notice shall be so advised by the local health officer, and he shall immediately institute proceedings for the abatement thereof.

#### Garbage and Refuse

Sec. 4. (a) All premises occupied or used for residential, business or pleasure purposes shall be kept in a sanitary condition.

(b) No kitchen waste, laundry waste, or sewage shall be allowed to accumulate, discharge or flow into any public place, gutter, street, or highway.

(c) No waste products, offal, polluting material, spent chemicals, liquors, brines or other wastes of any kind shall be stored, deposited or disposed of in any manner as may cause the pollution of the surrounding land or the contamination of the well waters to the extent of endangering the public health.

(d) All persons, firms, corporations or municipalities using or permitting the use of any land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited thereon and for the disposition of other waste materials and rubbish to the extent of eliminating any and all possibility that such materials and rubbish might constitute breeding places for insects, rodents or flies.

(e) No person shall permit any vacant or abandoned property owned or controlled by him to be or remain in such a condition as will afford the creation of a nuisance or other conditions prejudicial to the public health.

#### Disposal of Human Excreta

Sec. 5. (a) All human excreta in populous areas must be disposed of through properly managed sewers, treatment tanks, chemical toilets, approved privies, or by other methods approved by the State Department of Health. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of any drinking water supply, the infection of any flies, cockroaches, or the creation of any other nuisance.

(b) All effluent from septic tanks hereafter constructed shall be disposed of through a subsurface drainage field designed in accordance with good public health engineering practice or any other method which does not create a nuisance.

(c) No privy shall hereafter be constructed within seventy-five (75) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the Local or State Health Officer, and no privy shall be erected or maintained over any abandoned well or over any stream; provided further that no privy shall be constructed or maintained in any unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, which is located within thirteen hundred and twenty (1320) feet of any water well which is used for drinking water purposes, and the construction, maintenance, and use of such privy in violation of this section shall be a nuisance. Provided, however, that this Act shall not apply to any county having less than three hundred fifty thousand (350,000) inhabitants according to the last preceding Federal Census.

(d) The superstructure and floor surrounding the seat riser and hopper device of every approved privy shall be kept in a sanitary condition at all times, and shall have adequate lighting and ventilation.

(e) All material and human excreta removed from any privy vault or from any other place shall be handled so as not to create a nuisance. Such matter shall not be deposited within three hundred (300') feet of any highway unless buried or otherwise treated in accordance with the instructions of the local or State Health Officer.

#### Toilet Facilities

Sec. 6. (a) All operators, managers, or superintendents of any public buildings, school houses, theaters, filling stations, tourist courts, bus stations and taverns shall provide and maintain sanitary toilet accommodations.

#### Unincorporated Villages

Sec. 7. (a) Every person in possession of or owning any properties used for human habitation within an unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, shall:

(b) Install, remodel or maintain an approved privy or other approved type of disposal unit;

(c) Protect all wells providing drinking water from contamination;

(d) Dispose of all garbage and other waste matter in a sanitary manner;

(e) Abate all mosquito and fly breeding areas or mediums;

(f) Exterminate and destroy all rodents by poisoning, trapping or other appropriate means.

#### Public Buildings

Sec. 8. Any and all public buildings hereafter constructed shall have incorporated therein all such heating, ventilation, plumbing, screening, and rat-proofing features as may be neces-

sary to properly protect the health and safety of the public.

#### Ice Plants

Sec. 9. (a) No person except officers, employees, or others whose duties require such shall be permitted to go upon the platform covering the tanks in which ice is frozen in ice factories. All employees whose services are required on tanks shall be provided with clean shoes or boots which shall be used for no other purpose.

(b) No ice contaminated with sand, dirt, cinders, lint, or any other foreign substances shall be sold or offered for sale for human consumption.

(c) All water used in the manufacturing of ice shall be from an approved source and be of a safe quality.

(d) Every ice plant operator shall provide sanitary handwashing and toilet facilities for the use of all employees thereof.

#### Drinking Water

Sec. 10. (a) All drinking water for public use shall be free from deleterious matter and shall comply with the standards established therefor by the State Department of Health or the United States Public Health Service.

(b) The use of the common drinking cup is hereby prohibited in this state. No drinking water shall be served except in sanitary containers or through other sanitary mediums.

#### Protection of Public Water Supplies

Sec. 11. (a) No district, municipality, firm, corporation, or individual shall furnish to the public any drinking water for which any charge is made, unless the production, processing, treatment, and distribution is at all times under the supervision of a competent water works operator holding a valid certificate of competency issued under direction of the Texas State Department of Health.

(b) No owner, agent, manager, or operator or other person having charge of any water works supplying water for public or private use shall knowingly furnish to any person any contaminated drinking water or permit the appliances thereof to become insanitary.

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the State Department of Health with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the State Department of Health at least four (4) specimens of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

(d) No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless such other water is of a safe sanitary quality and the interconnection is approved by the State Department of Health. No water connection from any public drinking water supply shall be made to any sprinkling, condensing, cooling, plumbing, or any other system unless the said connection is of such a design as will insure against any backflow or siphonage of sewage or contaminated water from said system into the drinking water supply. Upon discovery of any condition contrary to these provisions, written notice shall be given to the owner or agent maintaining such condition by the local health officer, and such owner or agent shall make such corrections as are necessary to eliminate the condition complained of.

(e) No part of sub-sections (a), (b), and (c) of Section 11 shall apply to the production, distribution or sale of raw, untreated surface water.

#### Approved Plans Required for Public Water Supplies and Sewerage Systems

Sec. 12. (a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health.

(b) Any governing body of any municipality or any other agency supplying drinking water or sewage disposal service to the public desiring to make any material or major changes in any water or sewerage system that may affect the sanitary features of such utility shall, before making such changes, give written notice of such intentions to the State Department of Health.

(c) No water supply owner, manager, operator or agent thereof shall advertise or announce any water supply as being of any quality other than is disclosed by the latest rating by the State Department of Health. It shall be the duty of the State Department of Health to assemble and tabulate all necessary data relative to public drinking water supplies, which shall form the basis of an official comparative rating of all public drinking water supply systems, at least once each year and as often during the year as conditions may demand or justify. All supply systems attaining an approved rating shall have the privilege of erecting signs of a design approved by the State Department of Health on highways approaching the city of such supply; and these signs shall be immediately removed upon due notice from the State Department of Health in the event

the supply system fails to continue to meet the specified standards.

#### Sanitary Defects

Sec. 13. (a) All sanitary defects existent at public drinking water plants which obtain their supply from underground sources shall be immediately corrected.

(b) No public drinking water supply system furnishing drinking water from underground sources to the public shall be established in any place subject to possible pollution by any flood waters, unless adequately protected against flooding.

(c) All suction wells or suction pipes, used in any public drinking water supply system shall be constantly protected by practical safeguards against surface or sub-surface pollution.

(d) No livestock shall be permitted to enter or remain within the wellhouse enclosure of a public drinking water supply system.

(e) All public drinking water distribution lines shall be constructed of impervious material with tight joints, a reasonably safe distance from sewer lines.

(f) No water from any surface public drinking water supply shall be made accessible or delivered to any consumer for drinking purposes unless it has first received treatment essential to rendering it safe for human consumption. All treatment plants including aeration, coagulation, mixing, settling filtration, and chlorinating units shall be of such size and type as may be prescribed by good public health engineering practices.

(g) Clear water reservoirs shall be covered and be of such type and construction as will prevent the entrance of dust, insects, and surface seepage.

#### Impounded Water

Sec. 14. All persons, firms, corporations, and governmental agencies that impound any body of water for public use shall cooperate with the state and local departments of health in the control of disease bearing mosquitoes on the impounded area.

#### Swimming Pools and Bath Houses

Sec. 15. (a) All owners, managers, operators, and other attendants in charge of any public swimming pool shall maintain all such pools in a sanitary condition. The bacterial content of the water in any public swimming pool shall not be allowed to exceed the safe limits as prescribed by established standards of the State Department of Health. Residual chlorine from 0.2 to 0.5 parts per million units of water or any other method of disinfectant approved by the State Department of Health shall be maintained in every public swimming pool throughout the period of their use.

(b) No water in any swimming pool open for the public shall ever be permitted to show an acid reaction to a standard pH test.

(c) Any and all parts of any public bath house and the surroundings thereto shall at all times be kept in a sanitary condition.

(d) No comb or hairbrush used by two or more persons shall be permitted or distributed in any bath house of a public swimming pool.

(e) Facilities shall be provided in all swimming pools for adequate protection of bathers against sputum contamination.

(f) All persons known or suspected of being infected with any transmissible condition of a communicable disease shall be excluded from the pool.

(g) The construction and appliances of all public swimming pools shall be such as to reduce to a practical minimum any possibility of drowning or injury of bathers. All swimming pools hereafter constructed shall be in conformity with good public health engineering practices.

(h) All bathing suits and towels furnished to bathers by any person or persons shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) All dressing rooms of any swimming pool shall contain shower bath facilities.

(j) The operator or manager of any public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers thereof.

#### School Houses and Grounds

Sec. 16. (a) Every school building shall be located on grounds that are well drained and maintained in a sanitary condition.

(b) Every school building shall be properly ventilated and provided with an adequate supply of drinking water and approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities, all of which shall conform with established standards of good public health engineering practices.

(c) All public school lunch rooms maintained and operated shall comply with the State Food and Drug Regulations.

(d) All public school buildings and appurtenances thereto shall be maintained in a sanitary manner.

(e) All building custodians and janitors employed on a full-time basis shall be versed in the fundamentals of safety and school sanitation.

#### Tourists Courts, Hotels, Inns and Rooming Houses

Sec. 17. (a) Every agency, person, firm, or corporation operating any tourist court and hotels, inns and rooming houses in this state shall provide a safe and ample water supply for the general conduct thereof and shall submit samples of said water at least once each year before the month of May to the State Department of Health for bacteriological analysis.

(b) Every tourist court and hotels, inns and rooming houses shall be equipped with an ap-

proved system of sewage disposal maintained in a sanitary condition.

(c) All owners or operators of any tourist court and hotels, inns and rooming houses shall provide every practical facility essential to keeping the entire area of each of said courts in a sanitary condition.

(d) Every owner or operator of a tourist court and hotels, inns and rooming houses providing gas stoves for the heating of any unit thereof shall determine that such stoves are properly installed and maintained in properly ventilated rooms.

(e) All owners, operators, or managers of every tourist court and hotels, inns and rooming houses shall maintain all sanitary appliances situated therein in good repair.

(f) All food offered for sale at any tourist court and hotels, inns and rooming houses shall be adequately protected from flies, dust, vermin, spoilage, and shall be kept in a sanitary condition at all times.

(g) No owner, manager or agent shall rent or furnish any unit of any tourist court and hotels, inns and rooming houses to any person succeeding a previous occupant without having first thoroughly cleaned the said unit, and having provided clean and sanitary sheets, towels, and pillow cases therefor.

(h) Every tourist court and hotels, inns and rooming houses failing to conform to any provision of this Act is hereby declared to constitute a nuisance.

(i) All owners, operators, or managers of any hotel, inn, or rooming house shall maintain all such premises in a sanitary condition.

#### Fair Grounds, Public Parks and Amusement Grounds

Sec. 18. Every fair ground, public park or amusement center of any kind shall be maintained in a sanitary condition and any and all food and beverages which may be sold in any part of such place shall be adequately protected against flies, dust, vermin, spoilage, and shall be kept in a sanitary condition.

#### Industrial Establishments

Sec. 19. (a) No person, firm, corporation or other employer shall use, or permit to be used in the conduct of any business, manufacturing establishments or other place of employment, any process, material, or condition known to have any possible adverse effect on the health of any person or persons employed therein unless arrangements have been made to maintain the occupational environment to the extent that such injury will not result. Every industrial establishment shall be continually maintained in a sanitary condition.

(b) The Texas State Department of Health shall make available to the citizens of Texas current information concerning minimum allowable concentrations of toxic gases and such environmental standards as may pertain to the health and safety of the employees of industrial establishments in this state.

(c) The Texas State Department of Health shall make health and sanitary surveys and studies of industrial establishments including such special items as water supplies and distribution, waste disposal, adverse conditions caused by processes which may be responsible for or cause ill health of industrial workers. Such Texas State Department of Health shall bring to the attention of each surveyed establishment a summary of the studies and findings resultant thereof, together with any recommendations which may be deemed necessary for the adequate protection of the health, safety and well-being of the workers.

#### Sewage

Sec. 20. (a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall not apply to sewerage treatment plants using septic tanks and subsoil treatment.

(b) The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

#### Typhus and Pest Control

Sec. 21. (a) The word "place" as used in this Section shall be construed as meaning any enclosed structure frequented or inhabited by or operated for public trade.

(b) Every person, firm or corporation possessing any place that is infested with rodents shall, as soon as each such condition comes to their knowledge, proceed and continue in good faith to endeavor to exterminate and destroy all such rodents by the process of poisoning, trapping, fumigation or any other appropriate means and shall immediately proceed to provide every possible practical means of rat stoppage in any such place.

(c) All new public buildings which may hereafter be constructed shall have rat proofing features incorporated therein.

(d) The State Health Officer is directed to promote rodent control programs in all rat infested areas and in localities where typhus fever has appeared.

(e) It shall hereafter be unlawful for any person, firm or corporation to engage in commercial pest control activities in any structure used as a domicile, or otherwise used by human beings, to employ or distribute lethal gases, or other poisons used for the purpose of exterminating pests, unless such exterminating agency conforms to commonly accepted standards for safety in pest control.

#### Common Carriers

Sec. 22. (a) All persons, firms or corporations managing or operating bus lines or airlines in the State of Texas, or any person, firm or corporation operating any coastwise vessel along the shores of the State of Texas shall maintain sanitary conditions in all of their equipment and at all terminals or docking points.

(b) All drinking water provided by common carriers or their agents, shall be taken only from supplies certified as meeting the standards established by the Texas State Department of Health. All such water shall be kept and dispensed in a sanitary manner.

(c) Every place where drinking water is placed aboard any vehicle operated as a common carrier shall be known as a common carrier watering point. Every common carrier's watering point shall meet all required standards of sanitation, and water handling practices as may be established for such purposes by the State Board of Health. All common carrier watering points meeting such standards shall be so certified by the State Department of Health.

(d) In the event any sanitary defects exist at the watering point, the Texas State Department of Health shall issue or cause to be issued a supplemental certification showing that the watering point is only provisionally approved; and if said defects are suffered to continue after a reasonable time for the correction of same has expired, then the State Health Department shall notify or cause to be notified the common carriers not to receive drinking water at the watering point involved.

#### Authority of Home Rule Cities Not Affected

Sec. 23. All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175-76 of the Revised Civil Statutes of Texas of 1925.

#### Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or sub-division of this Act, shall be fined not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00), and each day of such violation shall constitute a separate offense. The penalties of this Act shall not apply where a person or persons have exercised due diligence, and have violated the same without any intent.

[Acts 1945, 49th Leg., p. 234, ch. 178; Acts 1951, 52nd Leg., p. 764, ch. 416, § 1; Acts 1961, 57th Leg., p. 1019, ch. 446, § 1.]



**Art. 4477-1a. Sewage Discharge into Open Ponds; Cities of 400,000 to 800,000**

**Definitions**

Sec. 1. In this Act:

"Municipal sewage" means any water-borne liquid, gaseous, or solid substances that are discharged from a publicly owned sewer system, waste treatment facility, or waste disposal system.

**Prohibition**

Sec. 2. No municipal corporation with a population of not less than 400,000 nor more than 800,000 according to the last preceding Federal census, may discharge any municipal sewage into any open pond, the surface area of which pond covers more than 100 acres, if the discharge will cause or result in a nuisance. The Texas Water Quality Board, acting with the Texas Air Control Board and the Texas State Department of Health, shall make periodic inspections of such ponds as necessary, but at least once every year, and shall ascertain whether such pond is causing or will cause or result in a nuisance.

If the Texas Water Quality Board, acting in accord with the Texas Air Control Board and the Texas State Department of Health, shall ascertain that the maintenance of such pond creates or continues a nuisance, it shall advise the municipal corporation making such discharge and shall allow such municipal corporation adequate time to abate such nuisance.

**Penalty**

Sec. 3. (a) Any municipal corporation with a population of not less than 400,000 nor more than 800,000 which fails to abate a nuisance pursuant to a directive of the Texas Water Quality Board as provided in Section 2 above, within a reasonable time after notification of such failure by the Texas Water Quality Board, shall be liable to a civil penalty of not more than \$1,000 a day for each day that it maintains such a nuisance.

(b) The Attorney General shall institute suit in district court in the county in which the alleged nuisance exists to collect the penalty described by the Act.

**Effective Date**

Sec. 4. This Act takes effect on September 1, 1971.

[Acts 1971, 62nd Leg., p. 2815, ch. 916, eff. Sept. 1, 1971.]

**Art. 4477-1b. Sewage Discharge into Open Ponds; San Antonio**

**Definitions**

Sec. 1. In this Act:

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

(2) "Municipal sewage" means any water-borne liquid, gaseous, or solid sub-

stances that are discharged from a publicly owned sewer system, treatment facility, or disposal system.

**Prohibition**

Sec. 2. The City of San Antonio shall operate Mitchell Lake in accordance with rules and regulations set by the Texas Water Quality Board.

**Sludge Removal**

Sec. 3. The accumulated waste sludge which is creating a nuisance in any open pond into which municipal sewage has been discharged for more than one year prior to the effective date of this Act by the City of San Antonio must be removed within two years following the effective date of this Act, in order to prevent public health hazards by converting the water in the pond to meet Texas State Department of Health standards.

**Penalty**

Sec. 4. (a) If the City of San Antonio discharges municipal sewage into an open pond whose surface area covers more than one acre in violation of Section 2 of this Act, it is liable to a civil penalty of not less than \$1,000 nor more than \$10,000 a day for each day it continues to discharge the municipal sewage in violation of Section 2 of this Act.

(b) If the City of San Antonio fails to remove accumulated waste sludges as provided in Section 3 of this Act, it is liable to a civil penalty of not less than \$1,000 nor more than \$10,000 a day for each day until the accumulated waste sludges are removed.

(c) The attorney general shall institute suit in a district court in the county in which the alleged violation occurred to collect the penalty prescribed by this Act.

[Acts 1973, 63rd Leg., p. 1744, ch. 632, eff. June 16, 1973.]

**Art. 4477-2. Mosquito Control Districts**

**Election on Establishment**

Sec. 1. In all counties of this State, the Commissioners Court may call an election within sixty (60) days after the effective date of this Act, and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified voters of such county desire the establishment of a Mosquito Control District to embrace all or a portion of the territory within said county, for the purpose of eradicating mosquitoes in said area. The form of the ballot shall be as follows:

FOR the establishment of a Mosquito Control District in \_\_\_\_\_ County.

AGAINST the establishment of a Mosquito Control District in \_\_\_\_\_ County.

**Election on Tax Levy**

Sec. 2. The Commissioners Court in each county governed by the provisions of this Act may call an election within sixty (60) days aft-

er the effective date of this Act and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified real property taxpaying voters of said county or portion of said county desire a levy of a tax not to exceed twenty-five cents (25¢) on each one hundred dollar tax valuation to finance the program provided in this Act. The form of the ballot shall be as follows:

FOR the levy of a tax of \_\_\_\_\_ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within \_\_\_\_\_ County.

AGAINST the levy of a tax of \_\_\_\_\_ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within \_\_\_\_\_ County.

#### Combining Elections

Sec. 3. The elections provided in Section 1 and Section 2 shall be combined in one election; provided, however, that only qualified property taxpaying voters shall be authorized to vote to create such district and on the question of a tax levy as provided in Section 2.

#### Levy and Collection of Tax

Sec. 4. If the elections provided in Section 1 and Section 2 of this Act are in favor of the establishment of a Mosquito Control District and the levy of a tax not to exceed twenty-five cents (25¢) on each one hundred dollar tax valuation, the Commissioners Court is authorized to levy a tax not to exceed the amount fixed by the election; provided, however, that the Commissioners Court is authorized to lower the tax to any designated sum it may determine, should the approximate revenue be in excess of the needed revenue to carry out the provisions of this Act. The taxes so levied shall be collected by the County Tax Assessor and Collector and shall be deposited in a separate fund and be used for the purposes of carrying out the provisions of this Act and for no other purpose.

#### Advisory Commission

Sec. 5. There shall be appointed by the Commissioners Court in each county in which a Mosquito Control District is created, an Advisory Commission composed of five (5) members who shall be qualified property taxpaying voters of the county. Each Commissioner of the Commissioners Court and the County Judge shall appoint one (1) member of the Advisory Commission. Members of the Commission shall serve without compensation. The Advisory Commission shall make recommendations to the Commissioners Court as it deems are necessary to carry out the provisions of this Act and shall perform such other duties as the Commissioners Court may determine. Each member of the Commission shall take an oath of office prescribed by the Commissioners Court. The Commissioners Court shall have the power to

remove any member of the Advisory Commission at any time it deems necessary.

#### Mosquito Control Engineer

Sec. 6. The Commissioners Court in each county which has established a Mosquito Control District is hereby authorized to appoint a Mosquito Control Engineer who shall be well qualified in the field of mosquito control and who shall serve at a salary to be determined by the Commissioners Court in such county. The powers and duties of the Mosquito Control Engineer shall be under the supervision of the Commissioners Court. The Engineer shall make recommendations to the Commissioners Court as to the number of assistants and employees as may be needed, and the Commissioners Court shall appoint such assistants and employees as it deems necessary for mosquito eradication in said District. The engineer shall also make biannual reports to the Commissioners Court or as many reports as requested by the Court relative to the work of mosquito eradication, and of the expenses needed for the ensuing year. The first report shall be made not later than June 30th subsequent to the establishment of the Mosquito Control District, and the second report shall be made not later than December 31st following the first report.

#### Merger of Districts

Sec. 6A. The Commissioners Courts of any two or more counties operating under the provisions of this Act may enter into an agreement for the merging of their separate districts into a single mosquito control district composed of such two or more counties. Said Commissioners Courts shall enter into an agreement that in all respects complies with the provisions of this Act, except that the advisory commission and mosquito control engineer, as required above, may be appointed for the entire district, rather than for each county.

#### Election on Dissolution of District

Sec. 7. The Commissioners Courts in those counties which have established a Mosquito Control District under the provisions of this Act shall call an election to dissolve said Mosquito Control District upon a petition of at least ten per cent (10%) of the qualified voters of the county as determined by the number of votes cast for Governor of the State of Texas in the last preceding general election. Only the property taxpaying voters of the county, however, shall be authorized to vote in an election to dissolve the Mosquito Control District.

#### Partial Invalidity

Sec. 8. If any section, subsection, paragraph, sentence, phrase or word of this Act shall be held invalid, such holding shall not affect the remaining portions of this Act and it is hereby declared that such remaining portions would have been included in this Act though the invalid portion had been omitted.

[Acts 1949, 51st Leg., p. 82, ch. 46; Acts 1955, 54th Leg., p. 460, ch. 126, § 1; Acts 1961, 57th Leg., p. 1105, ch. 498, §§ 1 to 3.]

## Art. 4477-3. Professional Sanitarians

## Purpose

Sec. 1. In order to safeguard life, health and property, and to establish and protect the professional status of those persons whose duties in environmental sanitation call for knowledge of the physical, the biological and the social sciences, there is hereby established a program for the Registration for Professional Sanitarians. It shall be the duty of the State Board of Health to carry out the provisions of this Act.

## Definitions

Sec. 2. As used in this Act:

(a) The term "field of sanitation" means the study, art, and technique of applying scientific knowledge for the improvement of the environment of man for his health and welfare.

(b) The term "sanitarian" means a person trained in the field of sanitary science to carry out educational and inspectional duties in the field of environmental sanitation.

(c) The term "Board" means the State Board of Health.

## Audit; Annual Report

Sec. 3. The funds collected under this Act and all appropriations to the Board shall be subject to audit by the State Auditor. The Board shall preserve a copy of all annual reports and State Audit reports issued with respect to this Act.

## Record of Proceedings; Register of Application

Sec. 4. The Board shall keep a record of all proceedings with respect to this Act, and a register of all applications for registration, which register shall show:

(a) the place of residence, name and age of each applicant;

(b) the name and address of employer or business connection of each applicant;

(c) the date of the application;

(d) complete information on educational and experience qualifications;

(e) the action of the Board;

(f) the serial number of the certificate of registration issued to the applicant;

(g) the date on which the Board reviewed and acted on the application; and

(h) such other information as may be deemed necessary by the Board.

## Certificates of Registration; Eligibility for Registration

Sec. 5. The Board, upon application on the form prescribed by it, and upon the payment of a fee of Ten Dollars (\$10.00), shall issue a certificate of registration as a professional sanitarian to any person who has the qualifications stipulated under the provisions of this Act, and who submits evidence by passing a written examination prescribed by the Board satisfactory to the Board that the applicant is qualified un-

der the provisions of this Act. In evaluating the evidence submitted to it, the Board shall carefully consider the applicant's knowledge and understanding of the principles of sanitation, the physical, biological, and social sciences, provided that:

(a) Any person, who, within six (6) months after the effective date of this Act, submits under oath evidence satisfactory to the Board that he has been a resident of the State of Texas for at least one (1) year immediately preceding the date of application, and that he was employed in the field of sanitation for a period of one (1) year prior to the effective date of this Act may be registered as a professional sanitarian.

(b) Any person, other than those covered under paragraph (a), who after the effective date of this Act applies for registration shall have had not less than one (1) year of full time experience in the field of sanitation and shall have completed training in the basic sciences and/or public health to the extent deemed necessary by the Board in order to effectively serve as a registered sanitarian. The educational requirements set forth by the Board shall not be at variance with the definition for Sanitarian set forth by the Position Classification Act of 1961. Other qualifications may be established by the Board in accordance with the rules and regulations adopted under this Act. Persons employed in the field of sanitation who meet all qualifications for registration as a professional sanitarian, except the qualifications of experience, shall, upon the approval by the Board and after payment of a fee of Five Dollars (\$5.00) and by passing a written examination prescribed by the Board, be granted a certificate of Sanitarian in Training. This certificate shall remain in effect unless revoked by the Board for a period not to exceed one (1) year after date of issue.

## Renewal of Certificates; Fee; Delinquency and Reinstatement

Sec. 6. Every professional sanitarian registered under the provisions of this Act who desires to continue in the field of sanitation shall annually pay to the Board a fee to be fixed by the Board for the annual renewal of each license, but the fee for renewal of license shall not be fixed in excess of Ten Dollars (\$10.00). Certificates of registration revoked for failure to pay renewal fees shall be reinstated under the rules and regulations of the Board.

## Suspension or Revocation of Certification; Refusing Registration

Sec. 7. The Board shall have the power to suspend or revoke the certificate of registration of any registrant for the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency, or misconduct in the practice of professional sanitation.

The Board may refuse to issue a certificate to any one whose certificate or license to engage in sanitation or in any other profession has been revoked, in this state or elsewhere, on the ground of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of his profession; and it may also refuse to issue a certificate to anyone upon satisfactory proof that he has been guilty of any of these charges in the practice of sanitation or any other profession. No such suspension or revocation of a certificate or refusal to register shall be permitted until at such time as a hearing is held and the person affected given the opportunity to answer the charges that may have been filed against him with the Board.

#### Administration, Fees and Expenses

Sec. 8. (a) The Board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) There is created a special Sanitarians Registration and License Fund which will consist of any and all fees charged or collected under any of the provisions of this Act. The Fund shall be under the supervision of the Board which shall file annually a statement of income and expenses with the Secretary of State. All expenses necessary to the administration and enforcement of this Act, as well as any other expenses of whatsoever character that may arise because of the terms and provisions hereof, shall be made from the Fund, including the reimbursements made to Board members, as provided for by the provisions of this Act. Any surplus remaining in the Sanitarians Registration and License Fund, at the end of each fiscal year, not necessary to defray the expenses mentioned and provided under the terms of this Act, shall be paid into the State Treasury.

(c) All expenses necessary to administering the provisions of this Act shall be paid out of the special Sanitarians Registration and License Fund, mentioned under Subsection (b) above, so that the passage of this Act shall never become a financial burden or obligation to the State of Texas. If the fees and charges set out herein prove to be inadequate to pay all costs created by this Act, the Board is hereby authorized to increase such fees and charges in such amount as will make the administration of this Act financially self-supporting without incurring any new or additional financial obligations to the State of Texas.

#### Advisory Committee

Sec. 9. The Board shall appoint a Sanitarian Advisory Committee to assist in the establishing of rules and regulations under this Act, said Advisory Committee to consist of not over five (5) members. The Sanitarian Advisory Committee shall meet at the request of the Board, and the State Comptroller is authorized to pay travel expenses of the Sanitarian Advisory Committee at the same rate paid regular

employees of the state when such expenses have been approved by the Commissioner of Health, but for not over four (4) meetings in any one (1) state fiscal year.

#### Reciprocity

Sec. 10. Agreements for reciprocity with those states having a registered Sanitarian's Act may be entered into by the Board under such rules and regulations as the Board may prescribe.

#### Exemptions

Sec. 11. Those persons such as physicians, dentists, engineers, and doctors of veterinary medicine, who are duly licensed by another official State Licensing Agency, who by nature of their employment or duties might be construed to come under the provisions of this Act, shall be exempt from the provisions of this Act.

#### Offenses

Sec. 12. After six (6) months from the effective date of this Act, no person engaging or offering to engage in work in the field of sanitation, in this state shall represent himself to be a sanitarian, or use any title containing the word "sanitarian," unless he is a registrant in good standing with the Board, either as a registered professional sanitarian or as a sanitarian in training. Any person who violates any provisions of this Section shall be guilty of a misdemeanor and shall be fined not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00).

#### Employment of Sanitarian

Sec. 12a. No term, Section, or provision of this Act shall ever be construed so as to require any city or governmental agency, or any person or persons whomsoever, to employ a sanitarian provided for or created under the terms of this bill.

[Acts 1965, 59th Leg., p. 606, ch. 300.]

Art. 4477-4. Repealed by Acts 1967, 60th Leg., p. 1952, ch. 727, § 17, eff. Sept. 1, 1967

See, now, art. 4477-5.

Art. 4477-5. Texas Clean Air Act

### SUBCHAPTER A. GENERAL PROVISIONS

#### Short Title

Sec. 1.01. This Act may be cited as the Texas Clean Air Act.

#### Policy and Purpose

Sec. 1.02. It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility.

## Definitions

Sec. 1.03. As used in this Act, unless the context requires a different definition:

(1) "air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor or odor, or any combination thereof produced by processes other than natural;

(2) "source" means a point of origin of air contaminants, whether privately or publicly owned or operated;

(3) "air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property;

(4) "board" means the Texas Air Control Board;

(5) "executive director" means the executive director of the Texas Air Control Board;

(6) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity; and

(7) "local government" means a county, an incorporated city or town; or a health district established under authority of Chapter 63, Acts of the 51st Legislature, 1949, as amended by Chapter 239, Acts of the 56th Legislature, 1959 (Article 4447a, Vernon's Texas Civil Statutes);

(8) "new source" means any stationary source, the construction or modification of which is commenced after the effective date of this statute;

(9) "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or which results in the emission of any air pollutant not previously emitted. Insignificant increases in the amount of any air pollutant emitted are not intended to be included, nor is maintenance or replacement of equipment components which do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted to the atmosphere.

## Prior Actions of Air Control Board Validated

Sec. 1.04. All orders, determinations, rules, regulations and other actions issued, taken and performed by the Texas Air Control Board under Chapter 687, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-4, Vernon's Texas Civil Statutes), are validated and remain in effect unless and until amended or superseded by order of the Texas Air Control

Board under this Act and are administered by and under the jurisdiction of the Texas Air Control Board under this Act.

## Board as Principal Authority

Sec. 1.05. The Texas Air Control Board is the state air pollution control agency. The board is the principal authority in the state on matters relating to the quality of the air resources in the state and for setting standards, criteria, levels and emission limits for air content and pollution control.

## Effect on Private Remedies

Sec. 1.06. Nothing in this Act affects the right of any private person to pursue all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor, or both.

## Confidential Information

Sec. 1.07. Information submitted to the board relating to secret processes or methods of manufacture or production which is identified as confidential when submitted shall not be disclosed by any member, employee, or agent of the board.

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

## Texas Air Control Board

Sec. 2.01. The Texas Air Control Board is an agency of the state.

## Members of the Board

Sec. 2.02. The board is composed of nine members, chosen as follows:

(1) Nine members are appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be experienced in the field of municipal government; one shall be an agricultural engineer with at least ten years experience in his profession; and four shall be chosen from the general public.

## Terms of Board Members

Sec. 2.03. The members of the board hold office for staggered terms of six years, with the term of three members expiring on the 1st day of September in each odd-numbered year. Each member holds office until his successor is appointed and has qualified.

**Qualification by Members; Vacancies; Records**

Sec. 2.04. (a) A member appointed by the governor while the Senate is in session is qualified to serve on the board after his nomination has been confirmed by the Senate and upon taking the Constitutional oath of office. A member appointed by the governor while the Senate is not in session is qualified to serve upon taking the Constitutional oath of office, and serves until the expiration of his term or until his nomination is rejected by the Senate.

(b) If a vacancy occurs in the office of a member of the board, the position shall be filled by a person appointed by the governor in the same manner as for a regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and has qualified.

(c) The official records of the board shall reflect the date each member's certificate of appointment was issued by the secretary of state, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

**Per Diem; Expenses**

Sec. 2.05. A member of the board is not entitled to a salary for duties performed as a member of the board. However, a member is entitled to \$25.00 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

**Board Officers**

Sec. 2.06. The board shall elect a chairman and a vice-chairman to serve two-year terms beginning on February 1 of each odd-numbered year.

**Board Meetings**

Sec. 2.07. (a) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and the vice-chairman from any meeting of the board, the members of the board present may select one of their number to serve as chairman for the meeting.

(b) The board shall have regular meetings at times specified by a majority vote of the board.

(c) The chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least two members of the board.

(d) A majority of the board constitutes a quorum to transact business.

**Executive Director**

Sec. 2.08. (a) The executive director shall be an employee of, and shall be designated by, the board.

(b) The executive director shall be the administrator of air pollution control activities for the board. In addition to his other duties prescribed in this Act and by the board, the executive director shall:

(1) keep full and accurate minutes of all transactions and proceedings of the board;

(2) be the custodian of all of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over all persons employed by the board; and

(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

(c) The executive director, or his authorized representative, shall:

(1) attend all meetings of the board but shall not be entitled to a vote; and

(2) handle or arrange for the handling of such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the board may direct or authorize.

**Staff Services**

Sec. 2.09. The basic personnel and necessary laboratory and other facilities as may be required to carry out the provisions of this Act shall be the personnel, laboratory, and other facilities of the Texas Air Control Board. The board may by agreement secure such services as it may deem necessary from any other departments and agencies of the state government and may arrange for compensation for such services, and may employ and compensate, within appropriations available therefor, such professional consultants, technical assistants, and employees on a full or part-time basis as may be necessary to carry out the provisions of this Act and prescribe their powers and duties. The board may request, and upon request shall receive, the assistance of any state educational institution, experimental station, or other state agency.

**Funds and Equipment from the State Department of Health**

Sec. 2.10. Any legislative appropriation made or to be made to the State Department of Health for air pollution control and all federal grants, loans or other federal monies received as matching funds to these appropriations or any other federal funds for air pollution control purposes received or to be received by the State Department of Health and all previous or presently pending equipment purchases from any State Department of Health appropriation

for air pollution control shall be transferred to the board.

#### Gifts and Grants

Sec. 2.11. The board may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. The board shall show in its records the source of all moneys or other things of value received by the board under this section from sources other than public sources.

#### Special Fund

Sec. 2.12. Money received by the board under Section 2.10 or Section 2.11 of this code shall be deposited in the state treasury and credited to a special fund. The board may use this fund for salaries, wages, professional and consulting fees, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this Act, as provided by legislative appropriation.

#### Documents, Etc., Public Property

Sec. 2.13. All information, documents and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations of Section 1.07 of this Act, all records of the board are public records open to inspection by any person during regular office hours.

#### Copies of Documents, Proceedings, Etc.

Sec. 2.14. Subject to the limitations of Section 1.07 of this Act, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive secretary is admissible as evidence in any court or administrative proceeding. The board shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Any other Acts concerning fees for copies of records do not apply to the board except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 446, Acts of the 59th Legislature, Regular Session, 1965.

#### Biennial Reports

Sec. 2.15. The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

#### Fees

Sec. 2.16. Except as specifically authorized in this Act, no fees may be charged by the executive secretary or the board for the performance of any of their duties and functions under this Act.

#### Seal

Sec. 2.17. The board shall adopt a seal.

### SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

#### In General

Sec. 3.01. The board shall administer the provisions of this Act and shall establish the level of quality to be maintained in, and shall control the quality of, the air resources in this state as provided in this Act. The board shall seek the accomplishment of the purposes of this Act through the control of air contaminants by all practical and economically feasible methods consistent with the powers and duties of the board. The board has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities.

#### State Air Control Plan

Sec. 3.02. The board shall prepare and develop a general, comprehensive plan for the proper control of the air resources of the state.

#### Emission Inventory

Sec. 3.03. The board is authorized to require the submission of information by persons whose activities cause emissions of air contaminants to enable the board to develop an inventory of the emissions of air contaminants in the state.

#### Research, Investigations

Sec. 3.04. The board shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this Act.

#### Power to Enter Property

Sec. 3.05. The members, employees and agents of the board have the right to enter any public or private property at any reasonable time, other than property designed for and used exclusively as a private residence housing not more than three families, for the purpose of inspecting and investigating conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere. Any member, employee or agent who, acting under the authority in this section, enters private property which has management in residence shall notify management, or the person then in charge, of his presence and exhibit proper credentials. Members, employees, or agents entering private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection. Should any member, employee or agent of the board be refused the right to enter in or upon such public or private property, the board may have the remedies authorized in Section 4.02 of this Act.

#### Monitoring Requirements; Power to Examine Records

Sec. 3.06. The board may prescribe reasonable requirements for the measurement and monitoring of the emissions of air contami-

nants from any source or from any activity causing or resulting in the emission of air contaminants subject to the jurisdiction of the board under this Act; the board may also prescribe reasonable requirements for the owner or operator of the source to make and maintain records on the measurement and monitoring of emissions. The members, employees and agents of the board may examine during regular business hours any records or memoranda pertaining to the operation of any air pollution or emission control equipment or facility, or pertaining to any emission of air contaminants. This authority does not extend to the records or memoranda pertaining to the operation of such equipment or facility on a property designed for and used exclusively as a private residence housing not more than three families.

#### Enforcement Proceedings

Sec. 3.07. The board, or the executive secretary when authorized by the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances or other decisions of the board.

#### Contracts, Instruments

Sec. 3.08. The board may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

#### Rule-Making

Sec. 3.09. (a) The board has the power, in accordance with the procedures in this section, to make rules and regulations consistent with the general intent and purposes of this Act and to amend any rule or regulation it makes.

(b) Before adopting any rules and regulations, or any amendment or repeal thereof, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal thereof, will have state-wide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state; if the rule or regulation, or amendment or repeal thereof, will have effect in only a part of the state, the notice shall be published one time at least 20 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(c) Any person may appear and be heard at the hearing on any rules or regulations. A record of the names and addresses of the persons appearing shall be made by the executive secretary. Any person heard or represented at

the hearing, or requesting notice of the action taken by the board, shall be sent written notice by mail of the action taken by the board.

(d) Before it becomes effective, any rule or regulation, or amendment or repeal thereof, shall be approved in writing by at least five members of the board, and a certified copy filed with the secretary of state for the time specified in Article 6252-13, Vernon's Texas Civil Statutes.

#### Content of Rules

Sec. 3.10. (a) A rule or regulation, or any amendment thereof, adopted by the board may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In adopting rules and regulations, the board shall give due recognition to the fact that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state, and the board shall take into consideration, in this connection, all factors found by it to be proper and just including existing physical conditions, topography, population, and prevailing wind directions and velocities, and the fact that a rule or regulation and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state.

(b) Except as provided in Subsections (c), (d), (e) and (f) of this section, the rules and regulations may not specify any particular method to be used to control or abate air pollution, nor the type, design or method of installation of any equipment to be used to control or abate air pollution, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment.

(c) The board is authorized to adopt rules and regulations to control and prohibit the outdoor burning of waste and combustible material. The board may include in the rules and regulations requirements as to the particular method to be used to control or abate the emission of air contaminants resulting from the outdoor burning of waste or combustible material.

(d) The board may include in the rules and regulations requirements as to the particular method to be used to control and reduce emissions from motors and engines used in propelling land vehicles. Any rules or regulations pursuant to this paragraph shall be consistent with provisions of federal law, if any, relating to the control of emissions from the vehicles concerned. The board shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment the inspection, certification or other approval of any feature or equipment designed for the control of emis-



sions from motor vehicles, if that feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(e) The board, when it deems control of air pollution is necessary, shall establish rules and regulations concerning the control of emissions of particulate matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule or regulation issued under the authority of this subsection may use the process weight method for controlling and measuring the emissions from the plant, or any other method selected by that person which the board or the executive secretary, when so authorized by the board, finds will provide adequate emission control efficiency and measurement.

(f) The board is authorized to prescribe the sampling methods and procedures which shall be used in determining violations of and compliance with the rules, regulations, variances, and other orders of the board. The board may prescribe ambient air sampling, stack-sampling, visual observation, or any other sampling method or procedure generally recognized in the field of air pollution control. The board may also prescribe new sampling methods and procedures when, in the judgment of the board, existing methods or procedures are not adequate to meet the needs and objectives of the rules, regulations, variances and other orders of the board, and where the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the board.

#### Limitations on Board Actions

Sec. 3.11. (a) The board may not make any rule, regulation, determination or order with respect to air conditions existing solely within buildings and structures used for commercial and industrial plants, works or shops when the source of the offending air contaminants is under the control of the person who owns or operates the plant, works or shops, or which affects the relations between employers and their employees with respect to or arising out of any air condition from such a source. This provision does not and is not intended to limit or restrict in any way the authority or powers granted to the board under the provisions of Subsections (c) and (f) of Section 3.10 of this Act.

(b) Nothing in this Act vests in the board any power with respect to any matter subject to the jurisdiction of the Texas Radiation Control Agency, as provided in Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), or over any source licensed by the atomic energy commission under the Atomic Energy Act of 1954, 42 U.S.C. 2011-2281.<sup>1</sup>

<sup>1</sup> 42 U.S.C.A. §§ 2011 to 2281.

#### Orders

Sec. 3.12. (a) The board is authorized to enter orders and determinations as may be necessary to effectuate the purposes of this Act. Except where otherwise specifically authorized in this Act, all orders shall be made by the board.

(b) If the board determines that air pollution exists, it may order such action as is indicated by the circumstances to control the condition. The board shall grant such time for the owner or operator of a source to comply with its order as is provided for in the rules and regulations of the board, which shall make provisions for such time gauged to such general situations as the hearings on any proposed rules and regulations may indicate are necessary.

#### Factors to be Considered

Sec. 3.13. In making orders and determinations, the board shall consider all of the facts and circumstances bearing upon the reasonableness of any emissions being made, including:

- (1) the character and degree of injury to, or interference with, the health and physical property of the people;
- (2) the social and economic value of the source;
- (3) the question of priority of location in the area involved; and
- (4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

#### Emergency Conditions

Sec. 3.14. (a) Whenever it appears to the board or the executive secretary that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the board or the executive secretary shall, with the concurrence of the governor, order any persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. The order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the order is issued as is practicable. The requirements of Section 3.17 as to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive secretary is practicable under the circumstances. Not more than twenty-four hours after the commencement of the hearing, and without adjournment of the hearing, the board shall affirm, modify or set aside the order.

(b) Whenever the board or the executive secretary finds that emissions from one or more air contaminant sources is causing imminent danger to human health or safety, but

that there is not a generalized condition of air pollution of the type referred to in Subsection (a) of this section, the board or the executive secretary may order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the provisions in Subsection (a) of this section pertaining to a hearing before the board, notice, and affirmance, modification or setting aside of orders shall apply.

(c) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and to act on the basis of that declaration, if the power is conferred by statute or constitutional provision, or inheres in the office.

#### Hearing Powers

Sec. 3.15. The board may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, regulations, orders or other actions of the board.

#### Delegation of Hearing Powers

Sec. 3.16. (a) The board may delegate the authority to hold hearings called by the board to:

- (1) one or more members;
  - (2) the executive secretary;
  - (3) one or more employees of the board;
- or

(4) with the concurrence of the state commissioner of health, one or more employees of the State Department of Health.

(b) Except for those hearings required to be held before the board under Section 3.14 of this Act, the board may authorize the executive secretary to call and hold hearings on any subject on which the board may hold a hearing. The board also may authorize the executive secretary to delegate the authority to hold any hearing called by the executive secretary to one or more employees of the board or, with the concurrence of the state commissioner of health, to one or more employees of the State Department of Health.

(c) The board may establish the qualifications required of the individuals who may be delegated the authority by the board or the executive secretary to hold hearings.

(d) Any individual or individuals holding a hearing under authority of this section are empowered to administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the board.

#### Notice of Hearings; Continuance

Sec. 3.17. (a) Except as otherwise specified in Subsection (b) of Section 3.09 and in Section 3.14 of this Act, the provisions of this

section apply to all hearings conducted pursuant to this Act.

(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) Notice of the hearing shall be published at least once in a newspaper regularly published or having general circulation in each county where by virtue of the county's geographical relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(d) If notice of the hearing is required by this Act to be given to a person, the notice shall be served personally or mailed to the person at his last address known to the board, not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to any officer, agent or legal representative of the party.

(e) The individual or individuals holding the hearing (hereafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time prior to the new setting, but it is not necessary to publish a newspaper notice of the new setting.

#### Air Quality Control Regions

Sec. 3.18. The board is authorized to designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

#### Cooperation and Assistance; Compacts

Sec. 3.19. The board shall:

(1) encourage voluntary cooperation by persons, or affected groups in the restoration and preservation of the purity of the air resources within this state;

(2) encourage and conduct studies, investigations and research concerning air control;

(3) collect and disseminate information on air control;

(4) advise, consult and cooperate with other agencies of the state, political subdivisions of the state, industries, other states and the federal government, and with interested persons or groups in re-

gard to matters of common interest in air control; and

(5) represent the State of Texas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts.

#### Investigations; Action on Violations

Sec. 3.20. (a) The executive secretary is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the rules, regulations, orders and determinations of the board, including without limitation investigations of violations and general air pollution problems or conditions. The executive secretary shall make or cause to have made such investigations as may be requested or directed by the board.

(b) Whenever it appears that any provision of this Act or any rule, regulation, determination or order of the board is being violated, the board, or the executive secretary when authorized by the board or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

(c) If a public hearing is held on an alleged violation, the board or the executive secretary shall give notice of the hearing to the person complained against and to such other interested persons as the board or executive secretary may designate. The executive secretary, on behalf of the board, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate.

#### Board May Grant Variances

Sec. 3.21. The board may grant individual variances beyond the limitations prescribed in this Act or in the rules and regulations of the board whenever it is found, upon presentation of adequate proof, that compliance with any provision of this Act, or any rule or regulation of the board, will result in an arbitrary and unreasonable taking of property, or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. Any person seeking a variance or to amend a variance shall submit a petition to the executive secretary containing all information reasonably required by the board or the executive secretary.

#### Action on Petition

Sec. 3.22. (a) The executive secretary shall mail a copy of the variance petition or a summary of its contents to the mayor and health authorities of the city or town, and the county judge and health authorities of the county, in which the source or sources are or will be located, and to the same officials of other coun-

ties, cities and towns which, in the judgment of the executive secretary or the board, may be affected. The information shall be sent not less than 20 days before the date on which the petition is to be considered by the board.

(b) The executive secretary shall also proceed promptly to investigate the petition and to make a recommendation to the board on the disposition to be made of it.

(c) Any person may file with the board his comments or recommendations on the requested variance.

(d) Upon receiving the recommendation of the executive secretary, the board may, if the recommendation is for the granting of a variance, do so without hearing. If the executive secretary recommends against the granting of the variance, if a local government requests a hearing, or if the board in its discretion concludes that a hearing would be advisable, then a hearing shall be held before the board acts on the petition for variance.

#### Conditions of Variance

Sec. 3.23. (a) In determining under what conditions and to what extent a variance from this Act or from a rule or regulation of the board may be granted, the board shall give due recognition to the progress which the person requesting the variance has made in controlling or preventing air pollution.

(b) In each variance, the board, in conformity with the intent and purpose of this Act to protect health and property, shall prescribe the conditions with which the holder of the variance shall comply, including:

- (1) the duration of the variance;
- (2) the extent of the abatement of emissions of air contaminants to be accomplished over a stated period of time, which shall be the time the board considers reasonable under the circumstances;
- (3) any requirements as to the submission of periodic reports on the progress which the holder of the variance makes toward compliance with the Act or any rule or regulation as to which the variance has been granted; and
- (4) the character and level of the emissions of air contaminants which may be made under the variance.

(c) After a public hearing, notice of which shall be given to the holder of the variance, the board may require the holder of a variance, from time to time, for good cause, to conform to new or additional conditions. The board shall allow the holder a reasonable time to conform to the new or additional conditions and, on application of the holder, the board may grant additional time.

(d) A variance does not become a vested right in the holder; and it may be revoked or suspended for good cause, after a public hearing, notice of which shall be given to the hold-

er of the variance, on any of the following grounds:

(1) the holder has failed or is failing to comply with the conditions of the variance;

(2) the variance or operations under the variance have been abandoned; or

(3) the variance is no longer needed by the holder.

(e) The notice required by Subsections (c) and (d) of this section shall be sent to the holder of the variance at his last known address as shown by the records of the board.

#### Extensions of Variances

Sec. 3.24. The holder of a variance may request the board for an extension of the term of the variance. Notice of the request shall be mailed to the public officials as specified in Subsection (a) of Section 3.22 of this Act at least 10 days before the board acts on the request. Except as to the time for notice as specified in this section, the procedure which the board shall follow on a request for an extension of a variance shall be the same as in the case of an original petition for variance.

#### Failure of Board to Act on Variance

Sec. 3.25. Upon the failure of the board to take action within 120 days after receipt in proper form of a petition for variance or to amend a variance, or of a request to extend a variance, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the board shall continue to have jurisdiction to act on the petition.

#### Effect of Filing a Variance Petition

Sec. 3.26. The filing of a petition for variance or to amend a variance, or of a request to extend a variance, does not serve to abate any suit, whether by the board or a local government, or any hearing, investigation, or other proceeding which the board or a local government may then have in process or may thereafter initiate. The granting of a variance or amendment to a variance, or of an extension of a variance, shall operate to authorize emissions of air contaminants or other activities beyond the limitations prescribed in this Act or in the rules and regulations of the board from the effective date of the board's action, but only for the period and to the extent specified in the board's order.

#### Construction Permit

Sec. 3.27. (a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may exempt certain facilities or types of facilities from the

requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

(b) Along with the application for the permit, the person shall submit copies of all plans and specifications necessary for determining whether the proposed construction will comply with applicable air control standards and the intent of the Texas Clean Air Act, together with any other information which the board considers necessary.

(c) If, from the information submitted under subsection (b) of this section, the board finds no indication that the proposed facility will contravene the intent of the Texas Clean Air Act, including proper consideration of land use, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(d) If the person applying for a permit makes the alterations in his plans and specifications to meet the specific objections of the board, the board shall grant the permit, but the board may refuse to accept new applications by a person until all previous objections of the board to the previously submitted plans of that person are rectified. If the person fails or refuses to alter the plans and specifications, the board shall refuse to grant the permit.

(e) A permit granted under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act.

(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt work on a facility which is being done without a permit issued under this section or is in violation of the terms of a permit issued under this section.

(g) The powers and duties set out in Section 3.27 and Section 3.28 may be delegated by the board to the executive director. The applicant may appeal to the board any decision made by the executive director under these sections.

(h) Provided, however, that at the time this Act becomes effective no provision of this Act shall apply where any person, firm, partnership or corporation has let any contract, or begun any construction for any addition, alteration or modification to any new or existing facility. Any contracts under this subsection shall have a beginning construction date no later than six months after the effective date of this Act to qualify for this exemption.

#### Operating Permit

Sec. 3.28. (a) If a permit to construct is issued, then within sixty days after the facility has begun operation, the person in charge of the facility shall apply for an operating permit. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and regulations and with the Texas Clean Air Act in support of the application for an operating permit. If start-up or testing requires more than sixty days, this period may be extended by the board.

(b) When all stipulations of the construction permit are met and the operation of the facility will not contravene air pollution control standards set by the board or will not contravene the intent of the Texas Clean Air Act, the board shall issue within a reasonable time the operating permit.

(c) If the board determines that the operation of such a facility will contravene the air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act it shall set out in a report to the applicant the specific objections which it finds to the facility and shall not grant the permit.

(d) The board shall refuse to accept new applications by a person for an operating permit until all the previous objections to that facility submitted by the board are rectified.

(e) A permit issued under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the facility contravene air pollution control standards set by the board or contravene the intent of the Texas Clean Air Act.

(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt the operation of any facility which is operating without a permit issued under this section or which is operating in violation of the terms of a permit issued under this section.

### SUBCHAPTER D. PROHIBITION AGAINST AIR POLLUTION; ENFORCEMENT

#### Unauthorized Emissions Prohibited

Sec. 4.01. (a) Except as authorized by a rule, regulation, variance or other order of the board, no person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity which causes or contributes to, or which will cause or contribute to, a condition of air pollution.

(b) No person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of this Act or of any rule, regulation, variance, or other order of the board.

(c) Any person who violates any provision of this Act or of any rule, regulation, variance, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each

act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

#### Enforcement by Board

Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, then the board, or the executive secretary when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the board, or the executive secretary when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

#### Enforcement by Local Governments

Sec. 4.03. Whenever it appears that a violation or threat of violation of any provision of Section 4.01 of this Act, or of any rule, regulation, variance or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the board, may cause to be instituted through its own attorney a suit for the injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the board is a necessary and indispensable party.

#### Venue and Procedure

Sec. 4.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, variance or other order of the board, the court may grant the board or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant including tempo-

rary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

(e) All civil penalties recovered in suits instituted by the State of Texas under this Act shall be paid to the general revenue fund of the State of Texas.

(f) All civil penalties recovered in suits instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments first instituting the suit on the other, with fifty percent of the recovery to be paid to the general revenue fund of the State of Texas and the other fifty percent equally to the local government or governments first instituting the suit.

#### Act of God, War, Etc.

Sec. 4.05. The liabilities which would otherwise be imposed by this Act upon persons violating any provision of this Act or of any rule, regulation, variance, determination or order issued under this Act shall not be imposed due to any violation caused by an act of God, war, strike, riot, or other catastrophe.

### SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

#### Inspections; Power to Enter Property

Sec. 5.01. (a) A local government has the same power as the board has under Section 3.05 of this Act to inspect the air and to enter public and private property within its territorial jurisdiction to determine whether or not:

(1) the level of air contaminants in any area within its territorial jurisdiction meets the level set by the board or, in the case of a city or town, the level set by the governing body of that city or town under the authority of Section 5.05 of this Act;

(2) the emissions from any source meet the level set for that source by the board or, in the case of a city or town, by the governing body of that city or town under the authority of Section 5.05 of this Act; or

(3) a person is complying with this Act or any rule, regulation, variance or other order issued by the board.

(b) The local government in exercising the powers granted in this section is subject to the same provisions and restrictions as the board.

(c) When requested by the board, a local government shall transmit the results of its inspections to the board.

#### Recommendations to Board

Sec. 5.02. A local government may make recommendations to the board concerning any

rule, regulation, determination, variance or other order of the board that affects any area within its territorial jurisdiction. The board shall give maximum consideration to the recommendations of a local government.

#### Enforcement Action

Sec. 5.03. A local government may bring an enforcement action under this Act in the manner provided in Subchapter D of this Act for local governments.

#### Cooperative Agreements

Sec. 5.04. A local government may execute cooperative agreements with the board or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid and education.

#### Authority of Cities and Towns

Sec. 5.05. (a) Subject to the provisions of Section 1.05 of this Act, an incorporated city or town has such powers and rights as are otherwise vested by law in the city or town to:

(1) abate a nuisance; and

(2) enact and enforce any ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with the provisions of this Act or the rules, regulations or orders of the board.

(b) Any ordinance enacted by an incorporated city or town shall be consistent with the provisions of this Act and the rules, regulations and orders of the board, and shall not make unlawful any condition or act approved or otherwise authorized pursuant to this Act or the rules, regulations or orders of the board.

### SUBCHAPTER F. JUDICIAL REVIEW

#### Appeal of Board Action

Sec. 6.01. (a) A person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a district court of Travis County.

(b) The petition must be filed within thirty days after the date of the board's action, or, in case of a ruling, order or decision, within thirty days after its effective date.

(c) Service of citation on the board must be accomplished within thirty days after the date the petition is filed. Citation may be served on the executive secretary or any member of the board.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that

the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a board action other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance shall be tried in the same manner as appeals from the justice court to the county court.

[Acts 1967, 60th Leg., p. 1941, ch. 727, eff. Sept. 1, 1967; Acts 1969, 61st Leg., p. 817, ch. 273, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., pp. 2003, to 2005, ch. 619, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1275, ch. 469, § 1, eff. Aug. 27, 1973.]

**Transitional provisions:**

Section 2 of Acts 1969, 61st Leg., p. 817, ch. 273, provided as follows:

"The six members of the Texas Air Control Board appointed or continued in office under the provisions of Section 3(A) of Chapter 727, Acts of the 60th Legislature, Regular Session, 1967 (Article 4477-5, Vernon's Texas Civil Statutes), and who are in office when this Act goes into effect, shall continue in office as six of the nine members of the Texas Air Control Board, as follows: Herbert C. McKee and Wendell H. Hamrick, the presently serving members appointed to a six-year term in July, 1968, shall serve for a period ending September 1, 1973; Clinton H. Howard and Henry J. LeBlanc, Sr., the presently serving members appointed to a six-year term in February, 1966, shall serve for a period ending September 1, 1971; Herbert W. Whitney, the presently serving member appointed to a four-year term in February, 1966, shall serve until September 1, 1969; and the person appointed to fill the vacancy in the position previously held by D. O. Tomlin, who was appointed in January, 1968, to serve the balance of a four-year term which began in August, 1965, shall serve until September 1, 1969. A person appointed as a member following the expiration of the term of office of a member named in the preceding sentence shall serve during a six-year term as provided in Section 2.03 of this Act. The governor shall also appoint the other three members of the board, as provided in Section 2.02 of this Act. The terms of these three members shall begin on September 1, 1969, and one shall be appointed for a two-year term, one for a four-year term, and one for a six-year term. A person appointed as a member following the expiration of the term of office of each of these three members shall serve during a six-year term as provided in Section 2.03 of this Act."

**Appeal:**

Section 4 of the 1971 act provided: "Upon the failure of the board to take action within 120 days after receipt in proper form of an application for a permit under Sections 3.27 or 3.28, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the board shall continue to have jurisdiction to act on the petition."

**Art. 4477-5a. Clean Air Financing Act**

**Short Title**

Sec. 1. This Act may be cited as the Clean Air Financing Act.

**Policy and Purpose**

Sec. 2. (a) It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility. The accomplishment of the purposes stated in this Act will implement such policy, and is for

the health and welfare of the people of this state and for the improvement and protection of their properties. The issuer in carrying out the purposes of this Act will be performing an essential public function under the constitution. The issuer shall not be required to pay any tax or assessment on the control facilities or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom shall at all times be free from taxation within this state. This section shall not be construed as affecting the laws of this state relating to ad valorem taxes imposed on persons or leaseholds or other interests of persons which are not public agencies or political subdivisions. Any control facilities that are the subject of any contract for purchase or use under this Act shall be construed to be subject to ad valorem taxation payable by the person contracting with the issuer as if such contract created a leasehold.

(b) It is hereby determined by the legislature and also declared to be the policy of this state that the control of air pollution is essential to the well-being and survival of its inhabitants and the protection of the environment, and that specifically the control, prevention, and abatement of air pollution are and will be for the specific purpose of the conservation and development of the natural resources of the state, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, through the prevention of further damage to or destruction of the environment, resulting in further conservation and development of such natural resources.

**Definitions**

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

(1) "Air contaminant," "air pollution," "person," and "Texas Air Control Board" shall have the same meanings as the terms are now defined in the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes).

(2) "Control facilities" means facilities designed to reduce or eliminate air pollution which have been so certified by the Texas Air Control Board or by its executive secretary as may be authorized by the Texas Air Control Board.

(3) "Cost" as applied to the acquisition, construction, or improvement of control facilities, including real property acquired therefor, shall include financing charges, interest prior to and during construction and for a period found to be reasonable by the issuer after completion of construction, expenses incurred for architectural and engineering services, legal services, plans, specifications, surveys, estimates, placing the control facilities in operation, administration, and such other expenses as may be necessary or incident to such acquisition, construction, and improvement.

(4) "Coastal basin" and "river basin" mean the coastal basins and river basins now defined and designated by the Texas Water Development Board as separate units for the purpose of water development and interwatershed transfers, and as they are made certain by contour maps on file in the office of the Texas Water Development Board, including, but not limited to, rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

(5) "Disposal system" and "river authority" shall have the same meanings as the terms are now defined in Chapter 25 of the Texas Water Code,<sup>1</sup> and "district" means any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, provided "district" shall not mean any district or authority located entirely within a river authority unless such district or authority includes within its boundaries all or part of at least two incorporated cities, towns or villages or is governed by any one or more of Chapters 56, 60, 61, 62, or 63 of the Texas Water Code, or was created for the primary purpose of the navigation of its coastal and inland waters.

(6) "Governing body" means, with reference to an issuer, the council, commission, commissioners court, board of directors, trustees, or similar body charged by law with the governance of an issuer.

(7) "Issuer" means and includes each of the following, respectively, each city, town, village, county, and district now or hereafter existing in this state.

(8) "Real property" means lands, structures, franchises and interests in land, water, land under water, riparian rights, and air rights and any thing and right pertaining thereto, including, but not limited to, easements, rights-of-way, uses, leases, licenses, and other incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

(9) "Resolution" means the resolution, order, ordinance, or such other action, as the case may be, of the governing body authorizing the bonds.

<sup>1</sup> See Water Code, § 25.003(10), (4), respectively.

**Control Facilities; Acquisition and Construction;  
Lease and Sale; Location**

Sec. 4. (a) Each issuer is authorized to acquire, construct, and improve, or cause to be acquired, constructed, and improved, control facilities. The issuer is also authorized to acquire real property as deemed appropriate by the issuer for the control facilities. Such control facilities may be located upon property owned by the issuer or upon property of another

person or persons. The issuer is authorized to enter into leases or other contracts with persons whereby such persons shall use or acquire control facilities of the issuer. The issuer is authorized to sell such facilities to any person or persons including a person or persons using such facilities, such sale to be by installment payments or otherwise and upon such conditions as the issuer deems desirable.

(b) As to a river authority such control facilities may be situated outside its boundaries if they are located wholly or partially within its river basin or a coastal basin adjoining its boundaries, and may be located anywhere in the state if such control facilities are financed at the same time and with the same issue of bonds also financing control facilities located within its boundaries or wholly or partially within its river basin or a coastal basin adjoining its boundaries.

(c) As to a city, town, or village such control facilities must be located wholly or partially within its corporate limits or wholly or partially within its extraterritorial jurisdiction as the term is used in the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

(d) As to a district other than a river authority and as to a county such control facilities must be located wholly or partially within its boundaries.

**Bonds and Notes; Issuance; Security; Payments; Election**

Sec. 5. (a) Each issuer is empowered to issue its negotiable bonds or notes payable from revenues of the issuer for the purpose of paying the cost of acquiring, constructing, or improving or causing to be acquired, constructed, or improved, control facilities, including real property required for the control facilities. Pending the issuance of definitive bonds or notes the issuer may authorize the delivery of negotiable interim bonds or notes eligible for exchange or substitution by use of the definitive bonds or notes. Bonds or notes shall not be issued to acquire existing control facilities solely for the purpose of again leasing or selling the same to the same person or one controlled by such person, but bonds may be issued to acquire existing control facilities which are to be substantially improved and then leased or sold to the same person or one controlled by the same person.

(b) Such bonds or notes shall be authorized by resolution of the governing body and shall have characteristics and bear such designation as may be determined by the governing body provided that the designation of the bonds or notes shall include the name or names of the person or persons using or purchasing the control facilities being financed with the bonds or notes or in the alternative the name or names of the person or persons guaranteeing the contractual obligations of the person or persons using or purchasing such control facilities, or if the control facilities are to be used or pur-



chased by a group of persons the designation may state that a group of persons will be using or purchasing such control facilities as therein provided. The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the governing body, shall be attested by its secretary, and shall bear the seal of the issuer of the governing body. It is provided, however, that such signatures may be printed or lithographed on the bonds if authorized by the governing body, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The issuer may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 40 years, may bear interest at a rate or rates, may be sold at a price or under terms determined by the governing body to be the most advantageous reasonably obtainable, within the discretion of the governing body, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds or notes, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(c) Such bonds or notes may be issued in more than one series and from time to time as required for carrying out the purposes of this Act.

(d) (1) The bonds or notes of any issuer may be secured by a pledge of all or any part of the revenues of the issuer derived from the use and/or sale of control facilities and the use and/or sale of, or services rendered by, disposal systems as specified by resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(2) In the alternative, the bonds or notes of a city, town, village or county may be secured by a pledge of said revenues and also by other utility revenues of the city, town, village or county specified by resolution of the governing body or in the trust indenture or other instrument securing the bonds or notes.

(3) Any such pledge under Subsection (1) or (2) of this paragraph may reserve the right, under conditions therein specified, to issue additional bonds or notes which will be on a parity with or subordinate to the bonds or notes then being issued. Bonds or notes issued for the purposes set out in this Act may be combined in the same issue with bonds or notes issued for other purposes authorized by law.

(e) It shall be the duty of the governing body to fix and from time to time revise payments under leases and other contracts for the use or sale of the control facilities of the governing body in order that such payments together with any other pledged revenues will be sufficient to pay such bonds or notes and the

interest thereon as the same mature and become due and to maintain the reserve or other funds as provided in the resolutions authorizing such bonds or notes or the trust indenture or other instruments securing such bonds or notes. The governing body shall have the power to direct the investment of moneys in the funds created by such resolutions, trust indentures, or other instruments securing the bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into the interest and sinking fund and reserve funds, and provisions for such may be made in the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes. Proceeds from the sale of the bonds or notes shall be used for the payment of all expenses of issuing and selling the bonds or notes. The proceeds from the sale of the bonds or notes may be invested: (1) in direct or indirect obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes; or (2) in certificates of deposit of any bank or trust company which deposits are secured by such obligations. Any bank or trust company with trust powers may be designated to act as depository of the proceeds of bonds, notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) The resolution authorizing the issuance of the bonds or notes or the trust indenture or other instrument securing them may provide that in the event of a default or under the conditions therein stated, a threatened default, in the payment of principal or of interest on bonds or notes, any court of competent jurisdiction may, upon petition of the holders of outstanding bonds or notes, appoint a receiver with authority to collect and receive pledged income, and such instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds or notes payable from the same source to institute or prosecute any litigation affecting the issuer's property or income.

(h) All such bonds or notes shall be special obligations payable solely from the revenues pledged to their payment and shall not be considered general obligations of the governing body, an issuer, or the State of Texas. The holder of the bonds or notes shall never have the right to demand payment from moneys derived by taxation or any other revenues of the issuer except those revenues pledged to the payment of the bonds or notes.

(i) (1) Before any city, town, village, or county issues any bonds or notes secured by the revenues described in Section 5(d)(1) of this Act, such city, town, village, or county

must publish notice of its intention to issue the bonds or notes at least one time in a newspaper of general circulation within the boundaries of such city, town, village, or county. Within 30 days after the date of such publication not less than 10 percent of the qualified electors of the city, town, village, or county issuing such bonds or notes, may file a petition with the clerk or secretary, as the case may be, of the governing body, praying the governing body to order an election for the purpose of submitting the proposition to issue such bonds or notes to a vote of the qualified electors of such city, town, village, or county, as the case may be. Upon the filing of such petition, such governing body shall order an election to be held in such city, town, village, or county to determine whether or not such bonds or notes shall be issued as indicated in such notice. The governing body shall determine the time and the place or places of holding said election; and the manner of holding same shall be governed by the Texas Election Code. If the proposition for the issuance of such bonds or notes be sustained by a majority of the qualified electors voting at such election on such proposition, then such bonds or notes shall be authorized and may be issued by the governing body. In the event no such petition is presented to the governing body within the time hereinabove prescribed, no election on the proposition shall be required, and such governing body shall then have the power to proceed with the issuance of the bonds or notes, as the case may be.

(2) Before any city, town, village, or county issues any bonds or notes secured by the revenues described in Section 5(d)(2) of this Act, the governing body of such city, town, village, or county must order an election to be held in that city, town, village, or county to determine the time and the place or places of holding the election; and the manner of holding it shall be governed by Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup> If the issuance of bonds or notes be favored by a majority vote of the qualified electors voting at such election, then the bonds or notes shall be authorized and may be issued by the governing body.

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

#### Refunding Bonds and Notes

Sec. 6. The governing body is authorized to issue refunding bonds or notes for the purpose of refunding the principal, interest and redemption premium, if any, on outstanding bonds authorized by this Act. Such refunding bonds or notes may be issued to refund more than one series of outstanding bonds or notes and combine the revenues pledged to the outstanding bonds or notes for the security of the refunding bonds or notes, and may be secured by other or additional revenues and deed of trust liens. The provisions of this law with reference to the issuance by the governing body of bonds or notes, their security, and their approval by the attorney general and the

remedies of the holders shall be applicable to refunding bonds or notes. Refunding bonds or notes shall be registered by the comptroller upon surrender and cancellation of the bonds or notes to be refunded, but in lieu thereof, the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the bank where the original bonds or notes are payable, in which case the refunding bonds or notes may be issued in an amount sufficient to pay the principal of, any redemption premium, and the interest on the original bonds or notes to their option date or maturity date, and the comptroller shall register them without concurrent surrender and cancellation of the original bonds or notes.

#### Additional Security for Bonds and Notes; Trust Indenture

Sec. 7. Any bonds or notes (including refunding bonds or notes) authorized by this law may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or outside the State of Texas. Such bonds or notes, within the discretion of the governing body, may be additionally secured by a mortgage or a deed of trust lien or security interest upon designated control facilities of the governing body and all property, franchises, easements, leases, and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell such control facilities for the payment of the indebtedness, power to operate such control facilities and all other powers and authority for the further security of the bonds or notes. Such trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties may contain any provisions prescribed by the governing body for the security of the bonds or notes and the preservation of the trust estate, and may make provision for amendment or modification thereof, may condition the right to expend the issuer's money or sell the issuer's control facilities upon approval of a registered professional engineer selected as provided therein, and may make such other provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable and proper and not in violation of law. Any purchaser at a sale made under the mortgage or the deed of trust lien, where one is given, shall be the absolute owner of the control facilities and rights so purchased. The trust indenture may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes.

#### Submission of Bonds, Notes and Contracts to Attorney General; Approval; Registration; Incontestability

Sec. 8. After any bonds and notes, including refunding bonds and notes, are authorized by the governing body, such bonds and notes and the record relating to their issuance shall be submitted to the attorney general for his examination as to the validity thereof. Where

such bonds and notes recite that they are secured by a pledge of the proceeds of a lease or leases or other contract or contracts theretofore made between the issuer and any person, such contracts may also be submitted to the attorney general. If such bonds or notes have been authorized and if such contracts have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts, and the bonds or notes then shall be registered by the comptroller of public accounts. After the bonds or notes, and the leases or other contracts, if any, have been approved by the attorney general and the bonds or notes registered by the comptroller of public accounts, such bonds or notes and any such leases or contracts shall be incontestable for any cause.

**Term of Lease or Contract**

Sec. 9. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein or refunding bonds or notes issued in lieu of such bonds or notes are fully paid.

**Bonds and Notes as Legal Investments and Security for Deposits**

Sec. 10. All bonds or notes issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking fund of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto.

**Construction Contracts; Performance Bonds and Bids**

Sec. 11. The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts let by the issuer; however, there shall be no obligation for an issuer to receive construction bids on any project and Chapter 163, Acts of the 42nd Legislature, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), or any other law requiring competitive bids, shall not apply to construction contracts for projects authorized by this Act.

**Relocation Expenses**

Sec. 12. In the event any issuer, in the exercise of the power of relocation, or any other power, makes necessary the relocation, raising,

lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer, and such expense shall be paid from the proceeds of any bonds or notes issued to finance control facilities, the installation of which results in such expense. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

**Applicability to Air Control Act and Board, Districts and Local Governments; Remedies of Private Persons**

Sec. 13. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the Texas Air Control Board, districts, or local governments in performing any of the powers, functions, and duties vested in such entities by other laws. The Texas Clean Air Act, as amended, shall be enforced without regard to ownership of any control facilities financed under this Act. The Act shall be wholly sufficient authority within itself for the issuance of the bonds or notes and the performance of the other acts and procedures authorized hereby, without reference to any other laws, or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds or notes are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of the Act and any provisions of any other law, the provisions of the Act shall prevail and control; provided, however, that any issuer shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. Nothing in this Act affects the right of any private person to pursue against a person contracting with an issuer pursuant to this Act all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor, or both. No person contracting with an issuer for the purchase or use of control facilities shall ever be entitled to urge the defense of sovereign immunity by reason of the ownership of such control facilities by an issuer. Notwithstanding the provisions of this section, it is further provided that nothing in this Act shall in any way limit or diminish the power and authority of the Texas Air Control Board or of a local government to enact and enforce rules and regulations and to carry out other duties authorized by the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes).

#### Certification of Control Facilities

Sec. 14. In certifying facilities as control facilities the Texas Air Control Board may prescribe necessary criteria and procedures for such certification and can limit such certification to confirming that the proposed facility is intended for the purpose of controlling air pollution. No certification as to the adequacy of the facility or its expected performance or other specifications shall be necessary.

#### Conformance with Constitutions

Sec. 15. Nothing in this Act shall be construed to violate any provision of the United States or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions.

#### Severability

Sec. 16. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that the Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1973, 63rd Leg., p. 96, ch. 55, eff. April 26, 1973.]

### Art. 4477-5b. Air Pollution

#### Definitions

Sec. 1. In this article:

(1) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odor, or any combination thereof, produced by processes other than natural.

(2) "Person" means an individual or a private corporation.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect humans, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property.

(4) "Source" means any point of origin of an air contaminant, whether privately or publicly owned or operated.

#### Emission of Air Contaminants

Sec. 2. No person may cause or permit the emission of any air contaminant which causes or which will cause air pollution unless the emission is made in compliance with a variance or other order issued by the Texas Air Control Board.

#### Violation of Variance Order

Sec. 3. No person to whom the Texas Air Control Board has issued a variance or other order authorizing the emission of any air contaminant from a source may cause or permit the emission of the air contaminant in violation of the requirements of the variance or order.

#### Punishment

Sec. 4. Any person who violates any of the provisions of Sections 2 or 3 of this article is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

#### Exceptions

Sec. 5. The emission of any air contaminant otherwise punishable under this article which is caused by an act of God, war, riot, or other catastrophe, is not a violation of this article.

#### Venue

Sec. 6. Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

Secs. 7 to 12. Repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974.

#### Partial Repealer

Sec. 13. To the extent that any other general or special law, including Article 695, Penal Code of Texas, 1925,<sup>1</sup> makes an act or omission a criminal offense, which act or omission also constitutes a criminal offense under this article, such other general or special law is repealed, but only to that extent.

#### Cumulative Effect; Clean Air Act

Sec. 14. Nothing in this article repeals or amends nor shall be construed to repeal or amend, either expressly or impliedly, any of the provisions of the Clean Air Act of Texas, 1967 (Article 4477-5, Vernon's Texas Civil Statutes), but this article is cumulative of that Act, which remains in full force and effect.

[Acts 1969, 61st Leg., p. 480, ch. 153, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974.]

<sup>1</sup> Repealed by § 3(a) of Acts 1973, 63rd Leg., p. 991, ch. 399, enacting the new Texas Penal Code.

### Art. 4477-6. Renderers' Licensing Act

#### Short Title

Sec. 1. This Act may be cited as the "Texas Renderers' Licensing Act."

#### Definitions

Sec. 2. As used in this Act, unless a different meaning is required by the context and/or may be necessary to effectuate the purpose of this Act, the following definitions shall apply:

(a) "Health Authority" means the Department of Health of the State of Texas,

or a duly authorized representative of such.

(b) "Commissioner of Health" means the Commissioner of Health of the State of Texas.

(c) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic or domesticated wild animal which was not slaughtered for human consumption.

(d) "Rendering raw material" means any material of animal origin, other than a "dead animal" as defined above, that is processed by rendering establishments, whether in unprocessed or partially processed form, and includes (but is not limited to) animals, poultry, and/or fish which were slaughtered or processed for human consumption but which became or were unsuitable for such use, all inedible products and by-products of animals, poultry, and/or fish slaughtered or processed for human consumption, any and all parts of dead animals, dead poultry and fish (in whole or in part), and waste cooking greases.

(e) "Rendering business" means the collection, transportation, disposal (whether by burying, burning, cooking, processing, or rendering) or storage of dead animals and/or rendering raw materials for commercial purposes, either as a separate business or in connection with any other established business.

(f) "Rendering establishment" means any establishment or part of an establishment, any plant, or any premises at or within which dead animals and/or rendering raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition other than as food for human consumption, and includes all other operations and facilities necessary, useful, or incidental to said rendering establishment except a "related station" as defined herein.

(g) "Related station" means any operation and/or facility necessary, useful, or incidental to the operation of a rendering establishment, but which is operated or maintained separately and apart from the rendering establishment or establishments served thereby, and includes (but is not limited to) a transfer station (where dead animals and/or rendering raw materials may be transferred from one conveyance to another) operated or maintained separately and apart from the rendering establishment or establishments served thereby.

(h) "Dead animal hauler" means any person who collects and disposes of dead animals for commercial purposes.

(i) "Rendering raw material hauler" means any person who collects and disposes of rendering raw materials for commercial purposes.

(j) "Processing" means any operation or combination of operations whereby materials derived from dead animal and/or rendering raw material sources are prepared for disposal at a rendering establishment, stored, or in any way treated for commercial use or disposition other than as food for human consumption.

(k) "Processing area" means any area in which processing is conducted.

(l) "Bactericidal agent" means any agent which will destroy bacteria and which is determined by the Health Authority to be safe for use in or about the rendering establishment.

(m) "Person" means any individual natural person, firm, partnership, association, corporation, trust, company, or organization, and every agent, officer, or employee of any thereof.

(n) "Employee" means any person who is employed in or by a rendering establishment, and who handles rendering equipment, utensils, containers, or packaging materials.

(o) "Nuisance" means any situation or condition within the provisions of Section 1(g) and Section 2, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Civil Statutes).

#### Scope and Application

Sec. 3. (a) On and after 90 days from the effective date of this Act, no person shall, without first obtaining an appropriate operating license from the Health Authority, engage in or operate a rendering business, or any adjunct thereof. During such 90-day period, any person who has applied for an operating license, or filed with the Health Authority written notice of an intention to apply for such license, and who has not been denied such, shall be subject to all the provisions of this Act and may operate as if he were a licensee. Immediately upon the effective date of this Act, no person shall, without complying with this Act and, when and as required by this Act, first obtaining a construction permit from the Health Authority, construct a new rendering establishment or enter into any new construction involving the addition to or replacement in an existing rendering establishment of one or more of the component parts set forth in Section 8(b) below.

(b) This Act shall not apply to any person slaughtering, butchering, manufacturing, or selling animal flesh and products solely as food for human consumption, or to persons transporting and/or disposing of the bodies of animals so killed or products thereof to any person solely for such purpose and use; provided, however, that if any such persons engage in rendering operations and/or processes, either in connection with the activities above exempted or wholly unrelated to and separate from such activities, then this Act shall have full application to all such rendering opera-

tions and/or processes, irrespective of the exemption granted in this Subsection (b). No person shall receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in the building or compartmented area of a building used as a rendering establishment or related station.

(c) This Act shall not apply to any governmental agency collecting, transporting, or disposing of dead animals and/or rendering raw materials in any way.

#### Operating Procedure

Sec. 4. (a) Operating procedures of rendering establishments shall provide for the conduct of rendering operations and processes in a sanitary manner, prevent the spread of infectious or noxious materials, and assure finished products which are free from disease-producing organisms. Rendering Establishment Operating Licenses shall be granted by the Health Authority only to those persons who demonstrate their compliance with this subsection.

(b) All operating licensees shall abide by and comply with the following specific requirements, upon which they shall be deemed to be in compliance with Subsection (a) above:

(1) All vehicles used in transporting dead animals and/or rendering raw materials to, or from, rendering establishments shall be leak-proof and shall be maintained at all times so that no nuisance is created by them.

(2) Collection vehicles shall be held to a minimum of brief stops while enroute to the establishment with dead animals and/or rendering raw materials.

(3) Collection vehicles shall be washed and sanitized at the end of each day's operations.

(4) Any truck bed that has been used for the transport of any dead animals and/or rendering raw materials shall be thoroughly washed and sanitized before use for transport of finished products.

(5) Any truck bed that has been used for the transport of any dead animals and/or rendering raw materials to a rendering establishment or of finished products from a rendering establishment shall be thoroughly sanitized with a bactericidal agent before use for transport of any product intended for human consumption. No truck bed shall ever be used for the transport of dead animals and/or rendering raw materials at the same time said truck bed or any part thereof (no matter how such part is sealed or separated from other portions of said truck bed) is being used to transport any product intended for human consumption.

(6) All dead animals and/or rendering raw materials received on the rendering establishment premises shall be placed in the rendering process immediately or shall

be stored for a period not exceeding 48 hours in such a manner as to prevent a nuisance and/or malodorous condition.

(7) All cooking or other dehydration operations shall be accomplished in such a manner as will prevent survival of disease-producing organisms in the material processed.

(8) No raw or uncooked dead animals or rendering raw materials containing disease-producing organisms shall be sold or offered for sale to any person not licensed under this Act; nor shall any person licensed hereunder purchase a dead animal or animals from a dead animal hauler not licensed hereunder.

(9) Adequate and suitable means for treatment of cooking vapors shall be provided and operated in such a manner as to control odors.

(10) During operations the floors in processing areas shall be kept reasonably free from processing wastes, including blood, manure, scraps, grease, water, dirt, and litter. Such floors shall be thoroughly cleaned at the end of each day's operations.

(11) All cooked and/or finished materials shall be kept separate from all dead animals and/or rendering raw materials areas in such a manner as to prevent contamination.

(12) Hide storage facilities shall be closed and separate from all other areas.

(13) Such equipment and utensils shall be provided as are necessary for the rendering establishment to conduct its operations in a sanitary manner.

(14) All wastes shall be handled and disposed of in a manner which will prevent contamination of the water supply, processing equipment, packaging materials, and finished products. All liquid wastes shall receive such treatment as may be required by the Health Authority and shall be disposed of in a manner approved by such Authority.

(15) Adequate and conveniently located toilet facilities for employees shall be provided within the establishment. An adequate number of lavatory facilities, supplied with warm water under pressure and with soap or other detergent, shall be conveniently located within the establishment for the washing of hands by employees.

(16) A drinking water supply, approved by the Health Authority, shall be provided at convenient locations within the establishment for the use of employees.

(17) Persons who engage in rendering processes and operations shall wear washable garments and accessories, and shall conform to hygienic practices during all periods of such duties.

(18) The immediate premises of rendering establishments shall be kept in a clean, neat condition and shall be reasonably free from undue collection of refuse, waste materials, rodent infestation, insect-breeding places, standing pools of water, and other objectionable conditions.

(19) Rendering establishments shall be kept in good repair.

(20) Rodents, roaches, and other vermin shall be controlled.

(21) All steel drums or other containers in which dead animals and/or rendering raw materials are accumulated by the producer thereof at various collecting points for pick-up by dead animal haulers or rendering raw materials collectors shall remain on the premises at each such collecting point and shall not be replaced, exchanged, or returned to a rendering establishment. The producer of such materials shall maintain such drums and containers in a clean and sanitary condition, and shall replace such drums and containers when necessary. Provided, however, that this Subparagraph (21) shall not apply where the producer of dead animals and/or rendering raw materials collects and accumulates such materials solely in rooms or areas which are separate and apart from all rooms and areas in which such producer receives, holds, slaughters, butchers, or otherwise processes or prepares any animal or animal part as food for human consumption.

(22) Every dead animal hauler shall keep the record of activities set forth in Section 16 below.

#### Related Stations

Sec. 5. Any person or persons who operate or maintain a related station not as a part or subsidiary of the rendering establishment or establishments served thereby, and who are not employees of any such establishment, shall nevertheless be subject to the provisions and requirements of Section 4, and shall obtain from the Health Authority a Related Station Operating License.

#### Dead Animal and Rendering Raw Material Haulers

Sec. 6. A dead animal and/or rendering raw material hauler, who operates separately and apart from and not as a part or subsidiary of the rendering establishment or establishments and/or the related station or stations served by him and who is not an employee of any such establishment or station, shall nevertheless be subject to the provisions and requirements of Section 4, and shall obtain from the Health Authority a Dead Animal Hauler Operating License and/or Rendering Raw Material Hauler Operating License.

#### Operating Licenses

Sec. 7. (a) Application for an operating license shall be under oath, shall state what type

of operations are contemplated (whether rendering establishment, related station, or dead animal and/or rendering raw material hauler), shall give the location from which the business is to be conducted, and shall include such relevant information as the Health Authority may require to determine the applicant's compliance with Section 4 of the Act.

(b) Upon filing of an application and payment of the fee required by this Act, the Health Authority shall investigate the facts, and if it shall find that the applicant's operations or proposed operations are within the requirements of Section 4, it shall grant such application and issue to the applicant an operating license which shall be his license and authority to carry on a rendering business or a related station or to move dead animals or rendering raw materials, as the case may be, under the provisions of this Act.

(c) If the Health Authority shall not so find, it shall deny the application and notify the applicant in writing of the particular or particulars in which he fails to meet the requirements of Section 4. The applicant shall have 90 days in which to correct or remedy such shortcomings, after which the Health Authority shall again investigate the facts. If the Health Authority shall then determine that the applicant's operations do not meet the requirements of Section 4, it shall again deny the application and shall promptly notify the applicant in writing of the particular or particulars in which he fails to meet said requirements.

(d) An application twice denied by the Health Authority under Section 7(c) next above shall be deemed cancelled, and no license shall issue thereon; provided, however, that an applicant shall, upon request within 30 days after the second denial, be entitled to a hearing on such application before the Commissioner of Health within 30 days after the date of such request.

(e) The Health Authority shall grant or deny each application within 30 days from its filing with the required fees, or from the expiration of the period in which to correct any shortcomings, if any, or from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and a Health Authority.

#### Construction and General Layout Requirements

Sec. 8. (a) All construction of or within rendering establishments which is subject to this Act shall be such as will provide for sanitary operations and environmental conditions, prevent the spread of disease-producing organisms and infectious or noxious materials, and prevent the development of malodorous conditions or a nuisance. Rendering Establishment Construction Permits (when and as required by this Act) shall be granted by the Health Authority only to those persons who demonstrate their compliance with this subsection.

(b) Any new construction of a rendering establishment or involving the addition to or replacement in an existing rendering establishment of one or more of the component parts set forth below, shall be in compliance as to such new construction with the following specific requirements (or so many thereof as may apply), and compliance therewith shall be deemed to be compliance with Subsection (a) above:

(1) Rendering establishments shall provide sufficient space for the conduct in a sanitary manner of rendering operations and processes carried on therein; for the installation of necessary utility equipment; and for the installation of processing equipment in such a manner that such equipment is easily accessible for cleaning.

(2) Rendering establishments shall be constructed so as to be easily maintained in a sanitary condition and to prevent harborage areas for rodents, roaches, and other vermin.

(3) All floors in rendering establishments shall be constructed of good quality concrete, metal, or other equally impervious and easily cleanable material, and shall be smooth, graded to drain, and provided with an adequate number of trapped drains or other waste-disposal facilities approved by the Health Authority. Gutters, if used to conduct such drainage, shall be so constructed and located as to be easily cleaned and maintained in a sanitary condition.

(4) Walls, partitions, and posts in all rooms and areas of rendering establishments shall be finished with smooth, washable surfaces of concrete, metal, or other equally impervious and easily cleanable material.

(5) Ceilings, or the underside of the roof if used as a ceiling, and exposed overhead structures in all rooms or areas of rendering establishments shall have easily cleanable surfaces.

(6) All outer walls and roofs and openings therein shall be protected against the entrance of insects, rodents, and other vermin; and interior walls, partitions, posts, ceilings, and other overhead structures shall contain no crevices or openings which may provide harborage for rodents or insects.

(7) Sufficient ventilation shall be provided in rendering establishments to dispel disagreeable odors, condensate, and vapor. For this purpose, ventilating equipment such as individual fans, vents, and hoods shall be provided where necessary. Any mechanical ventilating equipment shall be so located and controlled as to prevent finished products or processing equipment from being contaminated from nearby or preceding operations or from other sources.

(8) Employee toilet rooms and dressing rooms shall be adequately vented to the outside air; and all space heaters, gas stoves, water heaters, and any other equipment giving off noxious odors, fumes, or vapors shall be vented to the outside air.

(9) All exhaust outlets from mechanical ventilation devices shall be conducted to the outside air and shall be so arranged, placed, and extended as to avoid creating a nuisance to adjacent areas.

(10) The water supply of each rendering establishment shall be from a public water supply acceptable to the Health Authority; or shall be from a private source complying with the requirements of the Health Authority, located, constructed, and, if necessary, treated so as to provide water of a safe, sanitary quality.

(11) There shall be no physical connection between the plant's water supply and any unsafe or questionable supply. The use of water from any such unsafe or questionable supply shall be permitted only for limited purposes such as fire control or ammonia condensers. In all cases supply lines for unsafe or questionable water shall be clearly identified.

(12) Hot and cold water shall be conveniently accessible to all parts of the establishment. Such water shall be under ample pressure and shall be available through such outlets and in such quantities as may be necessary to meet effectively the needs of the establishment at all times. The hot water system shall have sufficient capacity to furnish ample water with a temperature of at least 180 degrees F. during all periods of processing and cleanup operations.

(13) The plumbing system in each rendering establishment shall be installed in compliance with the state law and applicable local plumbing ordinances; and shall be so designed, installed, and maintained as to protect the plant's water supply from contamination through cross-connections, back siphonage, back-flow leakage, or condensation. The plumbing system shall readily carry away all liquid wastes.

(14) Where necessary to prevent discharge into the drainage system of solid wastes likely to clog the drainage system, the liquid wastes containing such solid materials shall be passed through a separator or indirect-waste receptor which shall effectively retain such solids prior to discharge into the drainage system.

(15) Rendering establishments shall provide toilet and dressing room facilities for employees of each sex. The design, construction, and equipment of such rooms shall require approval of the Health Authority. Provided, however, that this requirement shall have no application to toilet and/or dressing facilities contained in



the managerial office area of a rendering establishment.

(16) A paved area, adequate in size and provided with adequate drains leading to a sanitary sewer system, shall be provided for the washing and sanitizing of trucks.

(c) The provisions of this section shall not apply to rendering establishments in existence and doing business as of the effective date of this Act; provided, however, that should an existing rendering establishment enter upon a program whereby its existing facilities are improved through new construction by the addition thereto or replacement of one or more of the component parts set forth in Subsection (b) above, then such new construction involving an addition or replacement of a Subsection (b) component (but only such new construction and not any other new construction or any already existing Subsection (b) component) shall be in compliance with this section, and a construction permit shall be obtained from the Health Authority (when and as required by this Act).

(d) Nothing contained herein shall require a construction permit from the Health Authority for construction of a new rendering establishment or new construction involving the addition or replacement in an existing rendering establishment of one or more Section 8(b) components where the cost to the rendering establishment of all Section 8(b) components involved and included in the new rendering establishment or the new construction to an existing rendering establishment is less than \$5,000; provided, however, that any and all such construction, notwithstanding the fact that no construction permit is required therefor, shall be undertaken and carried out in compliance with the requirements of Section 8.

#### Related Station Construction

Sec. 9. The construction of a new related station, or any new construction involving the addition to or replacement in an existing related station of one or more of the component parts set forth in Section 8(b) above, not undertaken in connection with and as a part of the construction of or new construction involving an addition of a Section 8(b) component or components to a rendering establishment for which a Rendering Establishment Construction Permit including the related station has been obtained, shall be subject to the provisions and requirements of Section 8, and shall be undertaken and carried out only in compliance with the requirements of Section 8 and after obtaining from the Health Authority (when and as required by this Act) a Related Station Construction Permit.

#### Construction Permits

Sec. 10. (a) Application for a construction permit shall be under oath, shall state what type of construction is contemplated (whether new rendering establishment or new construc-

tion involving the addition or replacement of a Section 8(b) component or components; rendering establishment or related station) shall specify when the proposed construction is to take place, and shall include such relevant information as the Health Authority may require to determine the applicant's compliance with Section 8 of this Act.

(b) Upon filing of an application and payment of the fees required by this Act, the Health Authority shall investigate the facts, and if it shall find that the applicant's proposed construction is within the requirements of Section 8, it shall grant such application and issue to the applicant a construction permit which shall be his permit and authority to carry forward with and complete the proposed construction.

(c) If the Health Authority shall not so find, it shall deny the application and notify the applicant in writing of the particular or particulars in which he fails to meet the requirements of Section 8. The applicant shall have 90 days in which to correct or remedy such shortcomings, at the end of which the Health Authority shall again investigate the facts. If the Health Authority shall then determine that the applicant's operations do not meet the requirements of Section 8, it shall again deny the application and shall promptly notify the applicant in writing of the particulars in which he fails to meet said requirements.

(d) An application twice denied by the Health Authority under Section 10(c) next above shall be deemed cancelled, and no license shall issue thereon; provided, however, that an applicant shall, upon request within 30 days after the second denial, be entitled to a hearing on such application before the Commissioner of Health within 30 days after the date of such request.

(e) The Health Authority shall grant or deny each application within 30 days from its filing with the required fees, or from the expiration of the period in which to correct any shortcomings, if any, or from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Health Authority.

#### Contents and Location of Licenses and Permits

Sec. 11. Each operating license and construction permit shall state the address of the rendering establishment, related station, or in the case of a Dead Animal and/or Rendering Raw Material Hauler Operating License, the dead animal and/or rendering raw material hauler, and the name of the licensee or permittee. The license or permit shall be displayed at the place of business named in the license or the place of construction named in the permit. The license or permit shall not be transferable or assignable except upon approval by the Health Authority.

## License and Permit Fees

Sec. 12. The following fees shall accompany each application for an operating license or a construction permit:

## (a) Operating Licenses:

(1) Rendering Establishment Operating License: \$100;

(2) Related Station Operating License: \$75;

(3) Dead Animal Hauler Operating License: \$50;

(4) Rendering Raw Material Hauler Operating License: \$50;

(5) Dead Animal Hauler Operating License and Rendering Raw Material Hauler Operating License combined: \$75.

(b) Construction permits: Rendering Establishment and Related Station Construction Permit fees, both for construction of new rendering establishments or new related stations and for new construction involving an addition or replacement of a Section 8(b) component in an existing rendering establishment or related station, shall be based upon the dollar value (at the cost to the rendering establishment or related station) of the Section 8(b) components included in the new rendering establishment or new related station or the new construction to an existing rendering establishment or related station, according to the following schedule:

Cost of Section 8(b) components	Fee
(1) Less than \$5,000	No Permit Required
(2) More than \$5,000 but less than \$10,000	\$ 50
(3) More than \$10,000 but less than \$25,000	100
(4) More than \$25,000 but less than \$50,000	250
(5) More than \$50,000	500

(c) All fees required hereunder shall be payable to the Department of Health of the State of Texas, and shall be deposited in the State Treasury in a special account to the credit of that department and used for the purpose of the processing and investigation of applications hereunder and the administration of this Act; provided, however, that if an application is withdrawn within five calendar days from the day of its receipt by the Health Authority, that authority shall refund in full the application fee which accompanied it.

## Annual Renewal

Sec. 13. Each license and permit shall remain in full force and effect until relinquished, suspended, revoked, or expired. All operating licenses shall be issued and granted for one year only, and shall be renewed annually, if desired, by the licensee. The annual renewal fee shall be the same as the original

application fee set forth in Section 12 above. Every licensee desiring to renew his operating license shall, on or before each January 1st, pay the Health Authority the required fee. Upon receipt of said fee, the license shall be automatically renewed for the ensuing calendar year. If the annual renewal fee remains unpaid 15 days after written notice of delinquency has been given to the licensee by the Health Authority, the license shall, unless good cause for such failure to renew is shown, thereupon expire, and thereafter shall be renewed only upon a new application pursuant to the provisions of this Act.

## Revocation of Operating Licenses or Construction Permits

Sec. 14. (a) The Commissioner of Health may, after notice and hearing, suspend or revoke any operating license or construction permit if it finds:

(1) that the licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or

(2) that any fact or condition exists which, had it existed or been known to exist at the time of the original application for such license or permit, would have justified the Health Authority in refusing to issue such license or permit.

Upon observing any such violation of this Act, the Commissioner of Health shall call the violation to the attention of the licensee or permittee and allow him a reasonable time to correct the violation; upon the failure of the licensee or permittee to do so, the Health Authority shall give notice of a hearing to suspend or revoke the license or permit, as hereinafter provided.

(b) The hearing shall be held upon 30 days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the suspension or revocation. The hearing shall be full, fair, and public. Such suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact, and a copy thereof shall be forthwith delivered to the licensee, or permittee. Such order, findings, and the evidence considered by the Commissioner of Health shall be filed with the public records of the Health Authority.

(c) The Commissioner of Health may reinstate a suspended license or permit or issue a new license or permit to a person whose license or permit has been revoked if no fact or condition exists which would have justified the Health Authority in refusing originally to issue such license or permit under this Act.

## Inspection Required

Sec. 15. At least once each year and at such other times as the Health Authority shall deem necessary, the Health Authority shall make an examination of the place of business

of each operating licensee and the place of construction, so long as it is continuing, of each construction permittee, and shall inquire into and examine the premises, equipment, and operations of such licensee or permittee insofar as they pertain to the matters regulated by this Act. In the course of such examination, the Health Authority shall have free access to the place of business of each operating licensee and the place of construction of each construction permittee. Any licensee or permittee who shall unreasonably fail or refuse to cooperate with and assist the Health Authority in its examination of the licensee or permittee shall thereby be deemed in violation of this Act, and such failure or refusal shall constitute grounds for the suspension or revocation of such license or permit.

#### Dead Animal Records

Sec. 16. (a) Each licensed rendering establishment, related station (under Section 5 above), and dead animal hauler (under Section 6 above) shall provide itself with a Dead Animal Log of a type and size prescribed by the Health Authority. Each such log shall contain in the front thereof the name of the licensed rendering establishment, related station, or dead animal hauler who will use the log. When a licensed rendering establishment, related station, or dead animal hauler receives a dead animal or animals, it shall for each such animal immediately enter upon the Dead Animal Log the following information:

- (1) date and time of pick-up of animal;
- (2) name of driver of collection vehicle;
- (3) description of the dead animal;
- (4) location of the dead animal, including county; and
- (5) the owner of the dead animal, if known.

A record of the general route followed in making such collection shall likewise be kept, either in the log or in an appendix thereto.

(b) The Dead Animal Log maintained by each licensed rendering establishment, related station, or dead animal hauler shall be open for inspection by the Health Authority, or by persons with written authorization from the Health Authority, at all reasonable times. Repeated or willful failure or refusal to produce such log for, or to permit inspection thereof by, persons properly authorized to inspect such log shall constitute grounds for the revocation of such person's operating license.

#### Regulations

Sec. 17. (a) The Commissioner of Health may make regulations necessary for the enforcement of this Act and consistent with all its provisions. Each such regulation shall include reference only to the section or subsection to which it applies. Before making a regulation, the Commissioner of Health shall give every licensee and current permittee at least 30 days' written notice of a public hearing, stating the time and place thereof and the terms or

substance of the proposed regulation. At the hearing, any licensee or current permittee may be heard and may introduce evidence, data, or arguments or place the same on file. No regulation shall be promulgated except after consideration of all relevant matter presented, and every such regulation shall be in written form, stating its effective date and the date of promulgation. Each regulation shall be entered in a permanent book which shall be a public record and be kept in the office of the Health Authority. A copy of every regulation shall be mailed to each licensee and current permittee and no regulation shall become effective until the expiration of at least 30 days after such mailing.

(b) On application of any person and payment of the cost thereof, the Health Authority shall furnish, under its seal and signed by an authorized representative, a certificate of good standing, and a certified copy of any license, permit, regulation, or order.

(c) Any transcript of any hearing held by the Commissioner of Health or findings by the Commissioner of Health or the Health Authority under this Act shall be a public record and open to inspection at all reasonable times.

#### Hearings and Review

Sec. 18. (a) At all hearings before the Commissioner of Health under the provisions of this Act, parties in interest shall have the right to appear in person and by counsel, and to present oral and written evidence. If requested by a party in interest, a record shall be made of all evidence offered by such party and all other evidence considered by the Commissioner of Health.

(b) Any party in interest aggrieved by any order, ruling, or decision of the Commissioner of Health may, within 30 days after the date of entry, file in the District Court of Travis County, Texas, a petition against the Health Authority officially as defendant, alleging therein in brief detail the order, ruling, or decision complained of and praying for a reversal or modification thereof. The Health Authority shall within 30 days after the service upon it of such petition, certify to said district court the record of the proceedings to which the petition refers, or such portion thereof as may be required by the petitioner. The cost of preparing and certifying such record shall be paid to the Health Authority by the petitioner and taxed as a part of the costs of the case. Upon the filing of an answer by the Health Authority, the case before the district court shall be at issue, without further pleadings, and upon application of either party shall be advanced and heard without further delay upon a trial de novo as that term is used in appealing from justice of the peace court to county courts.

(c) Upon a showing of cause therefor by any party in interest, the Commissioner of Health or the court may enter an order staying, pending appeal, the effect of an order of the Commissioner of Health from which the party in interest desires to appeal.

## Penalty for Violations

Sec. 19. (a) Any person who continues operations or construction which is subject to regulation under this Act without obtaining and keeping in force a valid operating license or construction permit, or who willfully falsifies any of the records required by this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for a period of not more than 30 days, or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

(b) In addition to all actions provided for in this Act and without prejudice thereto, the Health Authority may bring an injunction suit in any district court of this state having jurisdiction and venue to compel compliance with any provision of this Act or restrain any actual or threatened violation thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

## Powers of Municipalities, Texas Commercial Feed Control Act of 1957, Pollution Control Laws and Regulations; Unaffected

Sec. 20. Nothing in this Act shall be construed as precluding any municipality from passing any ordinance regulating the rendering business within its boundaries, or as affecting or nullifying any existing municipal law or ordinance regulating such; provided, however, that all rendering establishments, related stations, and dead animal and/or rendering raw material haulers subject to regulation under this Act shall at all times comply with and adhere to the provisions of this Act, whether so required by municipal ordinance or not. Likewise, nothing in this Act shall be construed as affecting, amending or repealing the "Texas Commercial Feed Control Act of 1957," Chapter 23, Acts of the 55th Legislature, Regular Session, 1957,<sup>1</sup> or as repealing or affecting any law of this state or rule or regulation of any public regulatory body having as its subject the control of water or air pollution.

[Acts 1969, 61st Leg., p. 184, ch. 78, eff. Sept. 1, 1969.]

<sup>1</sup> Article 3881e.

## Art. 4477-7. Solid Waste Disposal Act

## Short Title; Policy

Sec. 1. This Act may be cited as the Solid Waste Disposal Act. It is the policy of the state and the purpose of this Act to safeguard the health, welfare, and physical property of the people through controlling the collection, handling, storage, and disposal of solid wastes.

## Definitions

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity;

(2) "department" means the Texas State Department of Health;

(3) "board" means the Texas Water Quality Board;

(4) "local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act;

(5) "solid waste" means all putrescible and nonputrescible discarded or unwanted solid materials, including municipal solid waste and industrial solid waste; as used in this Act, the term "solid waste" does not include, and this Act does not apply to:

(i) soil, dirt, rock, sand and other natural and man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(ii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission;

(6) "municipal solid waste" means solid waste resulting from or incidental to municipal, community, trade, business and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(7) "industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, including discarded or unwanted solid materials suspended or transported in liquids, and discarded or unwanted materials in liquid or semi-liquid form; the term "industrial solid waste" does not include waste materials, the discharge of which is subject to the Texas Water Quality Act;

(8) "garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products;

(9) "rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600° F to 1800° F);

(10) "sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, regulations or orders established by the department or the board;

(11) "incineration" means the destruction of solid waste by burning in a furnace used for the volume reduction of solid waste (an incinerator);

(12) "composting" means the controlled biological decomposition of organic solid waste under aerobic conditions; and

(13) "person affected" for the purpose of Section 9 hereof means any person who is a resident of a county or any county adjacent or contiguous to the county in which a site, facility or plant is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

#### State Solid Waste Agency; Designations; Duties

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the collection, handling, storage, and disposal of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the State Board of Health in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste collection, handling, storage, and disposal by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the board with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The board is hereby designated the state solid waste agency with respect to the collection, handling, storage and disposal of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The board shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste collection, handling, storage and disposal by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The board has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The board shall consult with

the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects of the matters placed under the jurisdiction of the board by this Act.

(c) Where both municipal solid waste and industrial solid waste are involved in any activity of collecting, handling, storing or disposing of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act.

#### State Agencies; Authority and Powers; Permits

Sec. 4. (a) As used in this section, the term "state agency" refers to either the department or the board, and "state agencies" means both the department and the board.

(b) The department is authorized to develop a state municipal solid waste plan, and the board is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules and regulations consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act, including but not limited to collection, handling, and storage, and disposal by incineration, sanitary landfill, composting, or other method.

(d) Each state agency is authorized to inspect and approve sites used or proposed to be used for the disposal of the solid waste over which it has jurisdiction.

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the operation and maintenance of sites used for the disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection:

(1) The state agency to whom the permit application is submitted shall mail a

copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose extraterritorial jurisdiction the solid waste disposal site is located, and to the county judge and health authorities of the county in which the site is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each site. The permit shall include the names and addresses of the person who owns the land where the waste disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the permit is issued, including the duration of the permit.

(3) The state agency may extend or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of this Subsection (e) for permit applications apply also to applications to extend or renew a permit.

(4) Before a permit is issued, extended or renewed, the state agency to which the application is submitted shall issue notice and hold a hearing in the manner provided for other hearings held by the agency.

(5) Before a permit is issued, extended or renewed, the state agency to which the application is submitted may require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily closing the disposal site on final abandonment.

(6) If a permit is issued, renewed or extended by a state agency in accordance with this Subsection (e), the owner or operator of the site does not need to obtain a license for the same site from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act.

(7) A permit is issued in personam and does not attach to the realty to which it relates. A permit may not be transferred without prior notice to and prior approval by the state agency which issued it.

(8) The state agency has the authority, for good cause, after hearing with notice to the permittee and to the governmental entities named in Paragraph (1) of this Subsection (e), to revoke or amend any permit it issues for reasons pertaining to public health, air or water-pollution, land use, or violation of this Act or of any oth-

er applicable laws or regulations controlling the disposal of solid waste.

(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials originating from animals, poultry, and fish (all hereinafter referred to as "animals") and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under the Water Quality Act. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to the Water Quality Act. The provisions of this subsection do not apply to those rendering plants in operation and production at the time of the effective date of this Act.

(f) This subsection applies to the collection, handling, storage, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned and controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, or disposed of with solid waste from any other source or sources. The board may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the board may have with respect to the requirement of permits, the control of water quality, or otherwise, under the Texas Water Quality Act. However, the board may adopt rules and regulations as provided under Subsection (c) of this section to govern and control the collection, handling, storage and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The board may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the board such information as may be reasonably required to enable the board, or the executive director of the board when so authorized by the board, to determine whether in the judgment of the board or the executive director the waste disposal activity is one to which this subsection applies.

(g) The state agencies may, either individually or jointly:

(1) provide educational, advisory, and technical services to other agencies of the state, regional planning agencies, local governments, special districts, institutions, and individuals with respect to solid waste management and control, including collection, storage, handling and disposal;

(2) assist other agencies of the state, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for the development of solid waste facilities and management programs, and for research to improve the state of the art; and

(3) accept funds from the federal government for purposes relating to solid waste management, and to expend money received from the federal government for those purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and each state agency.

If a state agency engages in any of the programs and activities named in this subsection on an individual basis, it may do so only as the participation by that state agency is related to the management and control of the solid waste over which it has jurisdiction. When the state agencies do not participate jointly, they shall coordinate on any efforts undertaken by either one individually so that similar programs and activities of the state agencies will be compatible.

(h) The state agencies are authorized to administer and expend state funds provided to them by legislative appropriations, or otherwise, for the purpose of making grants to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs. The grants made under the terms of this Act shall be distributed in a manner determined by the state agency to whom the appropriation is made. Any financial assistance granted by the state through either of the state agencies to any local government under the terms of this Act must, at a minimum, be equally matched by local government funds.

#### County Powers

Sec. 5. (a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the board from exercising any of the powers vested in the department or the board under other provisions of this Act, including specifically the provisions authorizing the department and the board to issue permits for the operation and maintenance of sites for the disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of House Bill No.

727, Acts of the 62nd Legislature, 1971,<sup>1</sup> may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The board, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(b) A county is authorized to appropriate and expend money from its general revenues for the collection, handling, storage and disposal of solid waste and for administering a solid waste program; and to charge reasonable fees for the services.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the board.

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of sites used for the disposal of solid waste in areas not within the territorial limits of incorporated cities and towns. If this power is exercised, the county shall prescribe the form of and reasonable requirements for the license application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application or a summary of its contents to the department, the board, and the Texas Air Control Board, and to the mayor and health authorities of any city within whose extraterritorial jurisdiction the solid waste disposal site is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the county, to submit comments and recommendations on the license application before the county acts on the application.

(2) A separate license shall be issued for each site. The license shall include the names and addresses of the person who owns the land where the waste disposal site is located and the person who is or will be the operator or person in charge of the site; a legal description of the land on which the site is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed \$100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may extend or renew any license it issues in accordance with

reasonable procedures prescribed by the county. The procedures prescribed in Paragraph (1) of this Subsection (d) apply also to applications to extend or renew a license.

(4) No license for the use of a site for disposal of solid waste may be issued, renewed, or extended without the prior approval, as appropriate, of the department or the board, or the executive director of the board when so authorized by the board. If a license is issued, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the site does not need to obtain a permit from the department or the board for the same site.

(5) A license is issued in personam and does not attach to the realty to which it relates. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste. For like reasons, the department and the board each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those sites which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(e) Subject to the limitation specified in Subsection (a) of this section, a county may designate land areas not within the territorial limits of incorporated cities and towns as suitable for use as solid waste disposal sites. The county shall base these designations on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, the reasonable projections of growth and development for any city or town within whose extraterritorial jurisdiction the land area may be located, and any other pertinent considerations.

(f) A county is authorized to enforce the requirements of this Act and the rules and regulations promulgated by the department and the board as related to the handling of solid waste.

(g) Repealed by Acts 1971, 62nd Leg., p. 1763, ch. 516, § 20, eff. Aug. 30, 1971.

(h) A county may enter into cooperative agreements with local governments and other governmental entities for the purpose of the joint operation of solid waste collection, han-

dling, storage and disposal facilities, and to charge reasonable fees for the services.

<sup>1</sup> Article 4477-8, § 18.

#### Political Subdivisions with Jurisdiction in Two or More Counties

Sec. 6. This section applies to a political subdivision of the state which has jurisdiction over two or more counties or parts of two or more counties, and which has been granted the power by the Legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction. The governing body of such a political subdivision may, by formal resolution, assume for the political subdivision the exclusive authority to exercise, within the area subject to its jurisdiction, the powers granted in this Act to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area. In the exercise of these powers the political subdivision is subject to the same duties, limitations and restrictions applicable to counties under this Act. When a political subdivision assumes this authority, it shall also serve as the coordinator of solid waste handling and disposal practices and activities for all cities, counties and other governmental entities within its jurisdiction which have solid waste disposal regulatory powers or engage in solid waste handling or disposal practices or activities. Once a political subdivision assumes the authority granted in this section, it is empowered to and shall exercise the authority so long as the resolution of the political subdivision remains in effect.

#### Restrictions on Use of Disposal Site or Sanitary Landfill

Sec. 6a. (a) No incorporated city or town may abolish or restrict the use or operation of a solid waste disposal site or sanitary landfill within its limits or extraterritorial jurisdiction if the solid waste disposal site or sanitary landfill:

(1) was in existence at the time the city or town was incorporated or was in existence at the time the city or town annexed the area where it is located; and

(2) is operated in substantial compliance with all applicable state and county regulations.

(b) An incorporated city or town or a political subdivision operating a solid waste disposal site or sanitary landfill shall not be prevented from operating the solid waste disposal site or sanitary landfill on the ground that it is located within the limits or extraterritorial jurisdiction of another city or town.

#### Right of Entry; Inspections

Sec. 7. The authorized agents or employees of the department, the board, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town its extraterritorial jurisdic-



tion, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

**Prohibited Acts; Violations; Penalties; Injunction**

Sec. 8. (a) No person may cause, suffer, allow or permit the collection, storage, handling or disposal of solid waste, or the use or operation of a site for the disposal of solid waste, in violation of this Act or of the rules, regulations, permits, licenses or other orders of the department or the board, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this Act or of any rule, regulation, permit, license, or other order of the department or the board, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.

(c) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, regulation, permit, or other order of the department or the board, then the department or the board, or the executive director of the board when so authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, permit, or other order of the department or the board, the district court shall grant appropriate injunctive relief. At the request of the department or the board, or the executive director of the board when so authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(d) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the board, a county, or a political subdivision exercising the

authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the board and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(e) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the board, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the board and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(f) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit, license or other order of the board, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(g) In a suit brought by a local government under Subsection (d) or (e) of this section, the board and the department are necessary and indispensable parties.

(h) Any party to a suit may appeal from a final judgment as in other civil cases.

(i) All civil penalties recovered in suits instituted under this Act by the State of Texas through the board or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

Appeals

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the board may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the board, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

Cumulative Act

Sec. 10. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the board, the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

Severability

Sec. 11. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

[Acts 1969, 61st Leg., p. 1320, ch. 405, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1762, ch. 516, §§ 19, 20, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2631, ch. 863, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 351, ch. 149, § 1, eff. May 23, 1973; Acts 1973, 63rd Leg., p. 349, ch. 385, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1595, ch. 576, § 1, eff. Aug. 27, 1973.]

Creation of Special Districts

North East Texas Solid Waste Management Authority .....1973, ch. 315

Art. 4477-8. County Solid Waste Control Act

Purpose

Sec. 1. This Act is for the purpose of authorizing a cooperative effort by counties, oth-

er public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid wastes in order to control pollution in this state.

Title of Act

Sec. 2. This Act may be cited as the "County Solid Waste Control Act."

Definitions

Sec. 3. Words and phrases used in this Act shall have meanings as follows:

(a) "Act" shall mean the County Solid Waste Control Act, as amended.

(b) "Person" means any individual, public agency as defined herein, public or private corporation, political subdivision or governmental agency of the United States of America or the state, city as defined herein, copartnership, association, firm, trust, estate, or any other entity whatsoever.

(c) "District" means any district or authority heretofore or hereafter created and existing under Article XVI, Section 59, or Article III, Section 52 of the Constitution of Texas.

(d) "City" means any incorporated city or town in the state, whether operating under general law or under its home-rule charter.

(e) "Public agency" means any district as defined herein, any city as defined herein, or any other political subdivision or agency of the state having the power to own and operate solid waste collection, transportation, or disposal facilities or systems.

(f) "County" means any county in the state.

(g) "Solid waste disposal system" means any plant, composting process plant, incinerator, sanitary landfill, or other works and equipment not specifically mentioned herein which is acquired, installed, or operated for the purpose of collecting, handling, storing, treating, neutralizing, stabilizing, or disposing of solid waste, including sites therefor.

(h) The terms "solid waste," "sanitary landfill," and "composting" shall have meanings as set forth in the Solid Waste Disposal Act, as amended (compiled as Article 4477-7, Vernon's Texas Civil Statutes).

Disposal Systems; Acquisition, Etc., Purchase, Sale or Operating Agreements; Leases

Sec. 4. A county may acquire, construct, improve, enlarge, extend, repair, operate, or maintain all or any part of one or more solid waste disposal systems, and may make contracts with any person under which the county will collect, transport, handle, store, or dispose of solid waste for such person. A county may also enter into contracts with any person to purchase or sell, by installments over such

term as may be deemed desirable, or otherwise, all or any part of any solid waste disposal system. A county is also authorized to enter into operating agreements with any person, for such terms and upon such conditions as may be deemed desirable, for the operation of all or any part of any solid waste disposal system by any person or by the county; and a county may lease to or from any person, for such term and upon such conditions as may be deemed desirable, all or any part of any solid waste disposal system.

#### Eminent Domain

Sec. 5. A county shall have the power and right to acquire by purchase, lease, gift, condemnation, or in any other manner, and to own, maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein necessary or convenient to the exercise of the powers and purposes authorized by this Act. Such power of eminent domain shall be restricted to the respective county and be exercised in the manner provided in the laws applicable or available to counties.

#### Public Agencies; Contracts with County for Disposal Services; Authorization

Sec. 6. Public agencies are hereby authorized to make contracts with a county under which the county will make all or any part of a solid waste disposal system available to a public agency or group of public agencies or to other persons and furnish solid waste collection, transportation, handling, storage, or disposal services by the county's system. The contract may be upon such terms and for such periods of time as the parties may agree and may provide that it will remain in effect until any bonds issued or to be issued by the county, and any bonds which may be issued to refund the same, are paid; the contract may contain provisions to assure equitable treatment of parties who contract with the county for solid waste collection, transportation, handling, storage, or disposal services from all or any part of the same solid waste disposal system; shall provide the method of determining the amounts to be paid by the public agency to the county; may provide for the sale or lease to or use of by the county of any solid waste disposal system or any part thereof at the time owned or to be acquired by the public agency; may provide that the county shall operate any solid waste disposal system or part thereof at the time owned or to be acquired by the public agency; may provide that the public agency shall have the right to continued performance of such services after the amortization of the county's investment in the disposal system during the useful life thereof upon payments of reasonable charges therefor, reduced to take into consideration such amortization; and may contain such other provisions and requirements as the county and the public agency may determine to be appropriate or necessary. A city may also provide in its contract that the county shall

have the right to use the streets, alleys, and public ways and places within the city during the term of the contract.

#### Payments by Public Agency to County for Disposal Services; Sources

Sec. 7. Payments by a public agency to the county for solid waste collection, transportation, handling, storage, or disposal services may be made from the income of the public agency's solid waste disposal fund as may be prescribed in the contract between the county and the public agency. Such payments shall constitute an operating expense of such fund the revenues of which are thus to be applied. Payments to be made under the contract by the public agency may also be made from the revenues of the public agency's water, sewer, electric, gas, or any combination of utility systems, but in such event shall be subordinate to amounts required to be paid from the revenues of such system or systems for principal of and interest on bonds of the public agency which are outstanding at the time of the making of the contract and which are payable from such revenues unless the ordinance or resolution authorizing such outstanding bonds of the public agency expressly reserves the right to accord such contract payments a position of parity with, or a priority over, such public agency's bond requirements. Unless the alternative procedure prescribed in Section 8 is followed, neither the county nor a holder of any bonds of the county shall have the right to demand payment of the public agency's obligation out of any funds raised or to be raised by taxation. If the alternative procedure prescribed in Section 8 is followed, payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the public agency or may be payable both from taxes and from such revenues as may be prescribed in the contract.

#### Alternative Procedure for Payments by Public Agency to County; Bond Election; Taxes

Sec. 8. (a) If an election is held substantially according to applicable procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of Texas, as amended,<sup>1</sup> in reference to the issuance of bonds by cities, by a public agency having taxing powers, and in such election it is determined that the governing body of the public agency is authorized to levy an ad valorem tax to pay all or a portion of the payments to be made by the public agency under a contract between the public agency and a county to be authorized by the governing body of the public agency, the contract, in such event, will constitute an obligation against the taxing power of the public agency to the extent therein provided. No election is required for the exercise of any power conferred by this Act except for the levy of such tax.

(b) Only qualified electors of the public agency shall be entitled to vote at such election. Except as otherwise provided in this sec-

tion and in said Chapter 1, Title 22, the general election code<sup>2</sup> shall govern such election.

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

<sup>2</sup> Election Code, art. 1.01 et seq.

**Payments by Public Agency to County from Solid Waste Disposal Fund; Adjustment of Rates for Adequate Revenue**

Sec. 9. Whenever a public agency shall have executed a contract with a county under this Act and the payments thereunder are to be made either wholly or partly from the revenues of the public agency's solid waste disposal fund, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rates charged by the public agency to the end that the revenues therefrom, together with any taxes levied in support thereof, will be sufficient at all times to pay the expense of operating and maintaining such service or system, all of the public agency's obligations to the county under the contract, and all of the public agency's obligations under and in connection with bonds theretofore issued, or which may be issued thereafter, secured by revenues of such service or system. The contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates are to be adjusted.

**Rendering of Disposal Services Concurrently to More Than One Person; Contracts; Allocation of Cost**

Sec. 10. Any contract or group of contracts under this Act may provide for services to be rendered concurrently by the county to more than one person relating to the construction or operation of all or any part of a solid waste disposal system and provide that the cost of such services shall be allocated among the several persons as determined in the contract or group of contracts.

**Bonds; Pledge of Revenues from Contracts**

Sec. 11. For the purpose of acquiring constructing, improving, enlarging, extending, and repairing all or any part of a solid waste disposal system or systems, a county is authorized to issue bonds payable from and secured by a pledge of all or any part of the revenues to accrue under any contract or contracts made under this Act and from any other income pledged by the county. Said bonds shall constitute investment securities governed by Chapter Eight, Uniform Commercial Code,<sup>1</sup> and shall be in such form and denomination and shall bear such rate or rates of interest as are prescribed by the governing body of the county. A county is likewise authorized to refund any bonds issued under this Act upon such terms and conditions and bearing such rate or rates of interest as the governing body may prescribe. Said bonds may be sold at such price or prices and upon the terms determined by the governing body of the county at public or private sale or may be exchanged for property of any kind, real, personal, or mixed, or any interest therein deemed by the governing

body of the county to be necessary or convenient to the purposes authorized by this Act. Pending the issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

**Collection of Rates and Charges to Maintain Adequate Revenue; Allocation of Bond Proceeds**

Sec. 12. While any such bonds are outstanding, it shall be the duty of the governing body of the county to fix, maintain, and collect rates and charges for services furnished or made available by the solid waste disposal system adequate to pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on such bonds and to provide and maintain the funds created by the resolution authorizing the bonds. Interest to accrue on the bonds, administrative expenses to estimated date when the solid waste disposal system will become revenue producing, and reserve funds created by the resolution authorizing the bonds may be set aside out of bond proceeds.

**Establishment of Disposal Service as a Utility; Use of Service; Fees; Enforcement of Collection**

Sec. 13. Any public agency or any county may offer solid waste disposal service to persons within its boundaries, may require the use of such service by any or all such persons, may charge fees therefor, and may establish said service as a utility separate from other utilities within its boundaries. To aid in enforcing collection of fees for such solid waste disposal service, any public agency or county may suspend service from any or all other utilities owned or operated by it to any person who may become delinquent in payment of solid waste disposal service fees until such delinquency has been paid in full.

**Approval of Bonds and Contracts; Registration; Validation**

Sec. 14. After any bonds are authorized to be issued by a county pursuant to the powers provided in this Act, such bonds and the record relating to their issuance may be submitted to the Attorney General for his examination as to the validity thereof. Where such bonds recite that they are secured by pledge of the proceeds of a contract or contracts between the county and a public agency, a copy of such contract and the proceedings of the public agency authorizing same may also be submitted to the Attorney General. If the Attorney General finds that such bonds have been authorized and the contracts have been made in accordance with the Constitution and laws of the State of Texas, he shall approve the bonds and such contracts; and the bonds shall be registered by the Comptroller of Public Accounts. Thereafter, the bonds and contracts, if any, shall be valid and binding and shall be incontestable for any cause. In lieu of, or in addition to, such approval by the Attorney General, the board of directors of the district may have

any such bonds validated by suit in the District Court in the manner and with the effect provided in Chapter 316, Acts of the 56th Legislature.<sup>1</sup> The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit. If the proposed bonds recite that they are secured by the proceeds of a contract or contracts made by the district and one or more public agencies, the petition shall so allege; and the notice of the suit shall mention such allegation and each public agency's fund or revenues from which such contract or contracts are payable. Such suit shall be in the nature of a proceeding in rem. The judgment shall be res adjudicata as to the validity of such bonds and any such contract or contracts and the pledge of revenues thereof.

<sup>1</sup> Article 4717m.

#### Investment of Bond Proceeds

Sec. 15. Proceeds from the sale of bonds may be invested, pending their use, in such securities or time deposits as are specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them; and the earnings on such investments may be applied as provided in such resolution or trust indenture.

#### Bonds as Legal Investments and Security for Deposits

Sec. 16. All bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, school districts, or any other political corporation or subdivision of the State of Texas. Such bonds shall be eligible to secure the deposits of any and all public funds of the State of Texas and of any political subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

#### Relocation of Highways, Railroads, or Utility Facilities at County Expense

Sec. 17. In the event that any county, in the exercise of the power of eminent domain or power of relocation, or any other power granted hereunder, makes necessary the relocation, raising, rerouting or changing the grade of, or altering the construction of, any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipeline, all such necessary relocation, raising, rerouting, changing of grade or alteration of construction shall be accomplished at the sole expense of the county. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

#### Regulations; Ordinances; Guidelines; Adoption Procedures

Sec. 18. (a) Subject to the limitation prescribed in Subsection (a), Section 5, Solid Waste Disposal Act,<sup>1</sup> a county, acting through its commissioners court, may make regulations for the areas of the county not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns to provide for governing and controlling solid waste collection, handling, storage, and disposal. The regulations shall not authorize any activity, method of operation, or procedure which is prohibited by the Solid Waste Disposal Act or by the rules and regulations of the State Department of Health or the Texas Water Quality Board or the board. The county shall not, in its regulations, under the licensing power granted in the Solid Waste Disposal Act, or otherwise, impose any unreasonable requirements on the disposal of such solid waste in the county not warranted by the circumstances. The county may prohibit the disposal of any solid waste within the county if the disposal of the solid waste is a threat to the public health, safety, and welfare. The county may institute legal proceedings to enforce its regulations.

(b) To prohibit the disposal of solid waste within the county, the commissioners court must adopt an ordinance in the general form as prescribed for municipal ordinances specifically designating the area of the county in which the disposal of solid waste shall not be prohibited, unless such county has adopted solid waste disposal guidelines approved by the State Department of Health.

(c) The ordinance required in Subsection (b) of this section may be passed on first reading; however, such proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before such proposed ordinance is taken up by the Commissioners court, and such publication shall contain:

(1) a statement of the time, place, and date such proposed ordinance shall be considered by the commissioners court, and

(2) notice that any interested citizen of the county may testify at such hearing.

(d) A public hearing shall be had on the proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.

[Acts 1971, 62nd Leg., p. 1757, ch. 516, eff. Aug. 30, 1971.]

<sup>1</sup> Article 4477-7, § 5(a).

Sections 21 to 24 of the 1971 act provided:

"Sec. 21. This Act is cumulative of other statutes now or hereafter enacted governing the Texas Water Quality Board, the Texas Air Control Board, and the Texas State Department of Health relating to the issuance of bonds; the collection, transportation, handling, storage, or disposal of solid wastes; and the design, construction, acquisition, or approval of facilities for such purposes.

"Sec. 22. This Act and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein, and the powers granted under this Act shall be in addition to and not in derogation of any and all existing powers of any county or public agency. Chapter 854, Acts of the 61st Regular

Legislature (compiled as Article 2351g-2, Vernon's Texas Civil Statutes) is hereby repealed; otherwise, this Act shall not be deemed to repeal, expressly or by implication, any power or right granted to any county or to any public agency; and any county or public agency having powers under existing law similar to or in the nature of those granted hereunder may continue to operate and act in the exercise of such powers or may operate and act under the powers granted herein or both. This Act shall, however, constitute full authority for any county and any public agency and any person to enter into any contracts as authorized herein, for any county to authorize and issue bonds in accordance with the provisions hereof, and for any county to exercise any power granted herein without reference to the provisions of any other general or special law or specific act or charter; and no other general or special law or specific act or charter provision which in any way limits or restricts or imposes additional requirements upon the carrying out of any of the matters herein authorized to be done shall ever be construed as applying to any action or proceeding taken hereunder or done pursuant hereto except as expressly provided to the contrary in this Act.

"Sec. 23. All acts and proceedings of the governing bodies of any county or any public agency heretofore accomplished in the authorization and execution of solid waste disposal contracts as contemplated by said Chapter 854 as well as the terms and provisions of said contracts themselves are hereby ratified, approved, confirmed, and validated in all respects as of the respective dates thereof with the parties thereto bound accordingly until the terms and provisions of said contracts are lawfully changed by mutual consent of the parties thereto. All bonds authorized and issued by any district as contemplated by said Chapter 854 are also hereby ratified, approved, confirmed, and validated. Notwithstanding the foregoing provisions of this section, nothing herein shall validate any contract or any bonds now involved in litigation questioning the validity thereof if the question is ultimately determined against the validity thereof.

"Sec. 24. If any section, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional."

#### Art. 4477-9. Dumping Solid Waste on Property or Into Waters; Penalty

Any person who shall dump or otherwise dispose of trash, junk, garbage, refuse, unsightly matter, or other solid waste on public highways, rights-of-way, on other public or private property, or into any inland or coastal waters of Texas without written consent of the owner, his agent, or the public official in charge thereof shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$15 nor more than \$200. Every law enforcement officer of this State and its subdivisions shall have authority to enforce the provisions of this Act.

[Acts 1971, 62nd Leg., p. 1380, ch. 366, § 1, eff. May 26, 1971.]

### CHAPTER FOUR B. TUBERCULOSIS

#### Article

- 4477-11. Texas Tuberculosis Code.  
 4477-12. Prevention, Eradication and Control of Tuberculosis.  
 4477-13. Treatment of Respiratory Diseases at East Texas Chest Hospital; Designation as State Agency for Research and Training.

#### Art. 4477-11. Texas Tuberculosis Code

##### Short Title

Sec. 1. This Act shall be known and cited as the Texas Tuberculosis Code.

##### Purpose

Sec. 2. It is the purpose of this Code to provide care and treatment for those afflicted

with tuberculosis, to facilitate their hospitalization, and to enable them to obtain needed care.

##### Definitions

Sec. 3. As used in this Code, unless the context otherwise requires:

(a) "Board" means the Board for Texas State Hospitals and Special Schools;

(b) "Person" includes firm, partnership, joint stock company, joint venture, association, and corporation;

(c) "Political subdivision" includes a county, city, town, village, or hospital district in this State but does not include the Board or any other department, board, or agency of the State having state-wide authority and responsibility;

(d) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas;

(e) "Head of hospital" means the individual in charge of a hospital;

(f) "State Tuberculosis Hospital" means a tuberculosis hospital operated by the Board and presently consisting of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas, and Harlingen State Tuberculosis Hospital, Harlingen, Texas;

(g) "Tuberculosis patient" means any person, adult or child, who has any form of active tuberculosis in any part of the body;

(h) "Person legally responsible" means parents, guardians, spouses, or any person whom the laws of this State hold responsible for the debts incurred as a result of hospitalization and/or treatment;

(i) "Local health authority" means the city or county health officer, provided that such health officer is a licensed and practicing physician, within their respective jurisdictions;

(j) "Resident of this State" means a person who has lived continuously in this State for a period of one year or more and who has not acquired a residence in another state by living continuously therein for at least one year subsequent to his residence in this State. Time spent in a public institution or on furlough therefrom is not included in determining residence in this or another State;

(k) "Department" means the Texas State Department of Health.

##### Control and Sanitary Management of Tuberculosis

Sec. 4. Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health.

(a) Any physician, or other person, who makes a diagnosis in, or treats a case of tuberculosis, and every head or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of tuberculosis, shall report such case as soon as possible, in writing, or by an acknowledged telephone communication to the local health authority, stating the name, address, age, sex, color, and occupation of the diseased person and the date of the onset of the disease, and the probable source of infection.

(b) All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Texas State Department of Health. Such health authorities shall make a monthly report of all tuberculosis cases of which they may be cognizant to the Department before the fifth of the following month upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas.

(c) It shall be the duty of every physician and of every other person who examines or treats a person having tuberculosis to instruct him in measures for preventing the spread of such disease and of the necessity for treatment until cured. The attending physician is authorized to and he shall place the patient under restrictions of the character described hereafter.

(d) The management and control of tuberculosis shall require "special isolation" and "partial disinfection."

"Special isolation" includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

"Partial disinfection" means disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

Disinfection and isolation shall be considered a part of the control of tuberculosis and shall be done according to the directions set forth by the Department. Such regulations of isolation and disinfection are to be observed by all local health authorities, boards of health, health officers, physicians, school superintendents and trustees, and others. All local health authorities are hereby directed and authorized to maintain isolation and practice disinfection of all such tuberculosis patients, vehicles, or premises which are infected or are suspected

of being infected with tuberculosis whenever found.

Measures for Protection of Persons Not Infected  
by Tuberculosis

Sec. 5. Upon receipt of a report of a case of tuberculosis, the local health authority shall institute measures for protection of other persons from infection by such diseased person.

(a) All duly authorized health authorities of this State are authorized to notify any person who is known to be infected with tuberculosis, to place himself under the medical care of a physician licensed by the Texas State Board of Medical Examiners, hospital, or clinic, for treatment or examination until such physician, hospital, or clinic shall furnish such health authority with a certificate that such person examined or treated is free from tuberculosis in an infectious or contagious state. The certificate shall state that the person examined has been given an actual and thorough examination. The test or tests for tuberculosis shall be that type of test or tests as approved by the Department. Such certificates shall also contain the report of the test.

(b) Physicians, local health authorities, and all other persons are prohibited from issuing certificates of freedom from tuberculosis unless the examination and tests provided for are complied with and the person so examined is found free from tuberculosis in an infectious or contagious state. Before a certificate of freedom from tuberculosis can be issued in the case of a person who has previously been infected with tuberculosis, it will be necessary that the physician or person on giving the certificate shall submit to the local health authority a report of the person showing that a test or tests as are prescribed by the Department to prove freedom from tuberculosis have been given by such physician or made by a laboratory approved by the Department and that the results show that the person is no longer infected with tuberculosis in an infectious or contagious state.

(c) Any person who violates the provisions of Section 4(d), or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4(c), or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct, pursuant to rules and regulations promulgated by the Department, the removal of the person to a suitable place for examination, and if such person is found to be infected with tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined,

until such person is no longer in an infectious and contagious state.

Quarantine, as used in this Section, means the limitation of movement and separation, during that period of time while infectious and contagious, from other persons not so infected, in such places and under such conditions as will prevent the direct or indirect conveyance of such infectious or contagious condition to others not so infected.

A person found to be infected with tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State tuberculosis hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Section; and such commissioners courts and governing body of incorporated cities and towns are hereby authorized to incur on behalf of their said counties, cities, or towns, the expenses necessary to the enforcement of this Section.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide transportation to the State tuberculosis hospital so designated by the Board for any person quarantined under the provisions of this Section when suitable facilities are not available within the jurisdiction of the local health authority.

The local health authority shall inform all persons who are to be released from quarantine for tuberculosis, in case they are not cured, what further treatment should be taken to complete their cure.

(d) It shall be the duty of all persons infected with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any local health authority of the State in order to prevent the spread of tuberculosis.

(e) If an attending physician or other person knows or has good reason to suspect that a person having tuberculosis is so conducting himself or herself so as to expose other persons to infection or is

about so to conduct himself or herself, he shall notify the local health authority of the name and address of the diseased person and the essential facts in the case, and the local health authority shall investigate the facts of the case and shall adopt or employ the necessary sanitary measures as set out herein.

(f) No person shall offer for hire or cause or permit any one to occupy residences or living premises previously occupied by a person ill with tuberculosis until such residences or living premises shall have been disinfected under the supervision of the local health authority.

(g) Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises, or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the residence or living premises a placard as follows: "These residences or living premises have been occupied by a patient suffering with tuberculosis and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of law, except by an authorized health official."

(h) Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of tuberculosis may occur, shall report the same to the local health authority within twelve (12) hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance, nor shall any occupant of said house change his residence elsewhere without the consent of the local health authority.

No hotel proprietor, keeper of a boarding house or inn, or householder or head of a family wherein any case may occur shall be held liable for reporting a known or suspected case of tuberculosis so long as such report is based upon reasonable belief that the individual or individuals so reported have, or are suspected of having, tuberculosis.

(i) Immediately after being notified of any case of tuberculosis, the local health authority shall send to the attending physician or with his approval directly to the patient, any such information that might be available by either the Department or the Board relative to the prevention and control of such disease.

#### Violations; Penalties

Sec. 6. Any person violating the provisions of Sections 4 or 5 of this Act shall be guilty of a misdemeanor and upon conviction shall be



punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) and/or by imprisonment in the county jail for not more than thirty (30) days.

#### Local Regulations

Sec. 7. These regulations shall not be construed to prevent any city, county, or town from establishing such types of disinfection, isolation, control, and management of tuberculosis cases which they deem necessary for the preservation of the health of the individuals and the public; provided that such rules and regulations are not inconsistent with the provisions of this Code and are subordinate to said Code, and the rules and regulations prescribed by the Department. The local health authority shall at once furnish the Department with a true copy of any such regulations adopted by said local authorities.

Provided, however, that no provision in this Act shall be construed in any manner such that it would deprive any person of his right to depend on prayer or spiritual means alone for healing, in the practice of the principles, tenets, or teachings of his religion; provided that in so doing the sanitary, isolation and quarantine rules and regulations under this Act are complied with.

#### Who Admitted

Sec. 8. Persons afflicted with tuberculosis who shall have been residents of this State at the time of filing of their applications with the county judge as hereinafter provided, shall be admitted to State Tuberculosis Hospitals.

Non-resident indigents afflicted with tuberculosis who have been quarantined under the provisions of Section 5 herein may be admitted to a State tuberculosis hospital pending their return to the State of their residence.

#### Classification of Patients

Sec. 9. Patients admitted to State tuberculosis hospitals shall be two (2) classes:

- (1) Indigent public patients and
- (2) Non-indigent public patients.

(a) Indigent public patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

(b) Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally responsible for their support. This class shall be kept and maintained at the expense of the State as in (a) above, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or in case he has a

guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally responsible for his support and financially able to contribute as herein provided. Such claim may be collected by suit or other proceedings in the name of the State of Texas by the County or District Attorney of the county from which said patient is sent or the Attorney General against such patient or his guardian or the person or persons legally responsible for his support; and the suit shall be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the head of the State tuberculosis hospital accompanied by a certificate as to the amount due the State, which in no case shall exceed the actual cost of maintaining and treating such patient. In all suits or proceedings, the certificate of the head of the hospital shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said Attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent (10%) of the amount collected. All moneys so collected, less such commission, shall be paid by said County Attorney to the head of said hospital, who shall receive and receipt for the same.

#### Application for Admission

Sec. 10. The patient, or parent, guardian, or friend of any patient, seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into a State tuberculosis hospital. Such application for admission shall be in the form and contain such information as prescribed by the Board.

Provided, however, that upon the recommendation of any physician licensed to practice medicine in Texas the Board in its discretion may admit, immediately and directly to a State tuberculosis hospital, without application being made to the County Judge of the county wherein the patient resides, any child under the age of six (6) years who is afflicted with tuberculosis.

#### Certificate of Examination

Sec. 11. The application for admission to a State tuberculosis hospital shall be accompanied by a certificate of a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, or in the case of indigent patients by a certificate from the local health authority if such individual or individuals are licensed to practice med-

icine in the State of Texas by the Texas State Board of Medical Examiners, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis. The certificate shall be in the form and contain such information as prescribed by the Board.

In the event that the person applying for admission to a State tuberculosis hospital is afflicted with a contagious, infectious, or transmissible disease other than tuberculosis, then in such event the head of the State tuberculosis hospital to whom application has been made may use the presence of such contagious, infectious, or transmissible disease other than tuberculosis as a valid reason for delaying admission until such contagious disease is rendered non-contagious.

It shall be the duty of the County Judge to certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this State governing licenses to practice medicine.

#### Duties of Board

Sec. 12. (a) The Board upon receiving an application for admission to a State tuberculosis hospital shall designate the State tuberculosis hospital to which the application shall be sent. The hospital so designated by the Board upon receipt of such application shall review the same for purpose of approval or disapproval. Due consideration shall be given by the Board to the wishes of the patient and the accessibility to the State tuberculosis hospital when designating the hospital to which the application for admission will be sent.

(b) The Board shall prepare and adopt by-laws, rules, and regulations for the government, control, and management of all State tuberculosis hospitals, prescribing the duties of all officers and employees, and for enforcing the necessary discipline and restraint of all patients.

(c) The Board shall appoint for each of said tuberculosis hospitals a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners. Each physician so appointed shall be the head of the hospital under his control and shall have power to remove with just cause any person employed in said hospital over which he has such authority. Any such physician so appointed shall be removable at the discretion of the Board. The provisions applying to the powers and duties of the Board and of the head of the hospital as set forth in this Section are in addition to any others provided for by law. The Board shall supply each hospital with the necessary personnel for the operation and maintenance of such hospital.

(d) In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of application, certificates, records, and reports provided for under this Code and the information re-

quired to be contained therein; to require reports from the head of any State tuberculosis hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each hospital regularly to review the admitting procedures and care and treatment of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of tuberculous patients.

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

Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the head of a hospital may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the head of a hospital from his responsibility.

(f) The Board may return a non-resident patient admitted to a State tuberculosis hospital in this State to the proper agency of the State of his residence.

The Board may permit the return of any resident of this State who is admitted to a tuberculosis hospital in another state.

All expenses incurred in returning admitted patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

(g) The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients admitted to State tuberculosis hospitals in this or other states.

#### Duties of County Judge

Sec. 13. (a) If the County Judge is not satisfied as to the showing made in said application and certificate, or either, he may subpoena witnesses and examine them under oath concerning such matter, and if it appears to the County Judge that such person is entitled to admission into a State tuberculosis hospital under the provisions of this Code, he shall forward the application for admission, together with the certificate of examination hereinbefore described to the Board.

(b) If said County Judge shall find that the person for whom application is made is in fact not indigent, then he shall make application for such person as a non-indigent patient.

(c) If the County Judge shall determine not to make such an application for such person, then such person may make an application direct to the Board, and if in the judgment and opinion of the Board such patient is entitled to

admission into a State tuberculosis hospital, then the Board shall order him to be admitted.

(d) The County Judge shall see that each patient admitted to a State tuberculosis hospital is supplied with such necessary clothing as may be prescribed by the Board. The expenses of the clothing and transportation of public indigent patients shall be paid by the county from which the patient is sent. In the event that an indigent patient is admitted under the provisions of the preceding paragraph, the head of the State tuberculosis hospital where the patient is admitted shall supply the patient with such clothing as is necessary and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which said patient comes shall pay the cost thereof upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation.

#### No Preference in Admission

Sec. 14. (a) No patient in any state tuberculosis hospital shall be discriminated against but all patients shall be treated alike, given equal facilities, equal attention and equal treatment; it being recognized, however, that the condition of the individual patient may necessitate a greater or lesser degree of care and treatment.

(b) No patient in any such hospital shall be permitted to give any officer, servant, agent, or employee in any such hospital any tip, pay, or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said hospital, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced.

#### Private Additions to State Tuberculosis Hospitals

Sec. 15. (a) The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing, and maintenance by such fraternities or societies upon the grounds of any State tuberculosis hospital or dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing, and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing, or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said

State tuberculosis hospitals. "Children" under this Article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said State tuberculosis hospitals at the discretion of the head of the hospital and without any charge therefor against the State.

#### (b) Plan of buildings.

All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding Section, shall be arranged and agreed upon in writing by and between the Board on the part of the State and the properly authorized officers, board, or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board.

#### (c) Rules of admission.

The members of such charitable fraternities or societies, members of their families, and the widows and children of deceased members thereof, shall be classified according to the facts the same as other patients of said State tuberculosis hospitals are classified, and shall be admitted, maintained, cared for and treated in said hospitals upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies when not already filled with others having the same preferential right.

#### Relief of Indigent Persons

Sec. 16. When any indigent person suffering from tuberculosis is in a county other than his residence and makes application for financial relief to any local health authority or commissioners court or to the mayor, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, the local health authority or commissioners court or mayor or county judge shall forthwith notify the State Health Officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide resident of any county within this State, it shall be the duty of the State Health Officer and he shall have the power to provide for and furnish said indigent person with the necessary means of transportation and subsistence to return such indigent to the county of his residence.

#### Conveyances by Counties in Establishing Tuberculosis Hospitals

Sec. 17. All counties in this State are hereby authorized to donate and convey land to the

State of Texas in consideration of the establishment of a State tuberculosis hospital by the Board for Texas State Hospitals and Special Schools. The desirability, manner, and form of the donation and conveyance shall be within the discretion of the Commissioners Court of the particular county. No provision of this Section shall authorize the Commissioners Court of any such county to convey any land given or donated or granted to the county for the purpose of education in any manner other than that which is or shall be directed by law.

#### Appropriations

Sec. 18. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas; Harlingen State Tuberculosis Hospital, Harlingen, Texas; or in names previously used by these hospitals, shall remain available for their use and benefit.

#### Contracts

Sec. 19. All contracts heretofore entered into in behalf of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas; Harlingen State Tuberculosis Hospital, Harlingen, Texas; or in names previously used by these hospitals, are hereby ratified, confirmed, and validated for and in their behalf.

#### Incorporation of Statutes into Code

Sec. 20. Article 1970a-1 as to jurisdiction of specially created Probate Courts, Article 4493 as to adequate facilities in county hospitals, and Section 6A of Article 4437a as to tuberculosis control in counties of two hundred thousand (200,000) or more, of the Revised Civil Statutes of Texas, 1925, as amended, are by reference hereby adopted and made part of this Code.

[Acts 1959, 56th Leg., p. 379, ch. 181.]

#### Change of Names

*Acts 1969, 61st Leg., p. 848, ch. 282, §§ 1 to 5, provided for the transfer of the McKnight State Tuberculosis Hospital from the State Department of Health to the Department of Mental Health and Mental Retardation, for the change of name of the facility to the San Angelo Center, for the transfer of patients over a one year period, and for the transfer of certain employees.*

*Acts 1971, 62nd Leg., p. 1001, ch. 189, § 1, changed the names of Harlingen State Tuberculosis Hospital to Harlingen State Chest Hospital of San Antonio State Tuberculosis Hospital to San Antonio State Chest Hos-*

*pital, and of East Texas Tuberculosis Hospital to East Texas Chest Hospital. See article 3201a-2, § 1.*

#### Transfer of Responsibilities

*Acts 1965, 59th Leg., p. 124, ch. 51, § 1, in part, provides that all responsibilities, powers and duties concerning the care and treatment of those afflicted with tuberculosis possessed by the Board for Texas State Hospitals and Special Schools are transferred to the State Health Department, including all powers provided in this article. See article 4477-12, § 1.*

*Sections 1 and 5 of Acts 1969, 61st Leg., p. 848, ch. 282, provided:*

*"Sec. 1. Effective September 1, 1969, the custody, management, and control of the land, buildings, and facilities comprising the hospital complex known as McKnight State Tuberculosis Hospital is transferred from the State Department of Health to the Texas Department of Mental Health and Mental Retardation for the support, maintenance, and treatment of patients for whom the Texas Department of Mental Health and Mental Retardation is responsible.*

*"Sec. 5. Effective September 1, 1969, the name of McKnight State Tuberculosis Hospital is changed to the San Angelo Center."*

#### Art. 4477-12. Prevention, Eradication and Control of Tuberculosis

**Custody and Control of Tuberculosis Hospitals; Jurisdiction of State Board of Health; Transfer of Plants, Equipment, Staff Funds and Records**

Sec. 1. From and after September 1, 1965, all tuberculosis hospitals in the custody and control of the State Board for Hospitals and Special Schools shall be transferred to the State Health Department. This transfer is made to unify and consolidate the responsibility and functions of tuberculosis case finding and follow-up with treatment and cure of the disease. From and after September 1, 1965, the custody, control, maintenance and operation of all tuberculosis hospitals maintained by the State of Texas shall be under the jurisdiction and control of the State Board of Health and all responsibilities, powers and duties concerning the care and treatment of those afflicted with tuberculosis heretofore possessed by the Board for Texas State Hospitals and Special Schools are hereby transferred to the State Health Department, including all powers provided in House Bill No. 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, codified in Vernon's as Article 4477-11, Vernon's Civil Statutes.

There shall be transferred to the State Health Department from the State Board for Hospitals and Special Schools all equipment, staff, inventory and perishable stores necessary to insure the continual functioning of all state tuberculosis hospitals without interruption. This transfer shall also include the transfer to the State Health Department of all

personnel employed by the Board for Hospitals and Special Schools in its tuberculosis program, authorized salary rates for employment of personnel and all appropriations made to the Texas State Board for Hospitals and Special Schools for the operation of tuberculosis hospitals. This transfer shall be made effective September 1, 1965.

It is the intent and desire of the Legislature that the State Board for Hospitals and Special Schools and the State Health Department consult with the State Auditor, the Comptroller of Public Accounts, Budget Board and any other State Agency necessary for the orderly transfer of all physical plants, equipment, perishable stores, inventories, staff, funds and all records from the State Board for Hospitals and Special Schools to the State Health Department.

**Contracts for Care and Treatment of Tubercular Patients; Outpatient Clinics**

Sec. 2. The State Board of Health may contract for the support, maintenance, care and treatment of tubercular patients admitted to any facilities under the jurisdiction of the Board and/or for the support, maintenance, care and treatment of tubercular patients under its jurisdiction. Such contract may be made between the Board and city, county and state hospitals, private physicians, licensed nursing homes and hospitals and hospital districts, and the State Board of Health may contract for such existing diagnostic and other services available in a community or region as deemed necessary to prevent further spread of tuberculosis. Full development of these essential services needed for the control of tuberculosis is the responsibility of the State Board of Health.

Authority to contract provided herein shall be cumulative of all other contractual rights of the State Board of Health. Provided such contract shall not include the assignment of any lien accruing to the state.

The State Board of Health is authorized to establish and operate Outpatient Clinics on the premises of the State's Tuberculosis Hospitals or other locations deemed necessary for the purpose of providing follow-up treatment on discharged patients. Persons receiving such treatment are financially liable as are inpatients.

From and after the effective date of this Act, the Board for Texas State Hospitals and Special Schools shall not have the authority to contract for the support, maintenance, care and treatment of tubercular patients committed to the State Board of Health. Provided, however, nothing herein shall affect the contractual obligations created by the Board for Texas State Hospitals and Special Schools prior to the effective date of this Act for the support, maintenance, care and treatment of tubercular patients, and all such contractual obligations on behalf of the state created by the Board for Texas State Hospitals and Special Schools prior to the effective date of this Act, pursuant

to the provisions of Acts of the 58th Legislature, Regular Session, 1963, Chapter 43, codified in Vernon's as Article 3174b-5, Vernon's Civil Statutes, shall be performed and carried out by the State Board of Health.

**Reports; Pathological Findings**

Sec. 3. All reports required by Section 4 of House Bill No. 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, codified in Vernon's as Section 4, Article 4477-11, Vernon's Civil Statutes, shall be accompanied by a copy or results of any and all pathological findings or reports pertinent to the disease of tuberculosis by the physician diagnosing, treating or offering to treat the disease. The State Board of Health shall be responsible for obtaining, where desirable, subsequent pathological reports and/or findings relating to tubercular patients so reported.

**Examination of Pupils for Tuberculosis Infection**

Sec. 4. The State Board of Health shall provide for the examination for tuberculosis infection of all pupils in the first and seventh grades of the public, parochial and private schools of this state, and of all pupils transferred to the public, parochial and private schools of this state from another state or county.

**Annual Certificate of Examination of School Personnel**

Sec. 5. All school personnel, including teachers, clerical employees, supervisory personnel, bus drivers, personnel handling food and personnel performing janitorial services, shall be required to furnish the governing board of any public school in this state on or before September 1 of each year a certificate signed by a person licensed to practice medicine in this state, revealing that such school personnel have been examined for the disease or tuberculosis during a period of time not exceeding one hundred twenty (120) days prior to September 1 of each year, and revealing the results of such examination, and revealing that the results of such examination have been furnished the State Board of Health by the person performing the examination. No person shall be permitted to perform his or her duties in the absence of such certificate being furnished the governing board of the school.

**Examination of Migratory Workers; Duties of Labor Agents; Violations**

Sec. 6. All persons seeking to perform migratory work in this state shall furnish the labor agent for such person a certificate signed by a person licensed to practice medicine in this state revealing:

- (1) that the person seeking to perform migratory work has been examined for the disease of tuberculosis;
- (2) the results of such examination; and
- (3) that the results of such examination have been furnished to the State Board of Health.

No labor agent shall obtain employment for any migratory worker unless and until such labor agent has been furnished a certificate revealing that such worker has been examined for the disease of tuberculosis within a period of time not exceeding sixty (60) days prior to employment. Violation of the provisions of this Section shall be grounds to revoke and cancel the license of any labor agent who violated the provisions of this Section.

As used in this Section, "labor agent" means a person, partnership, corporation, association, legal representative, trustee, or receiver who is licensed by the Commissioner of Labor Statistics and who, for a fee, procures or attempts to procure employment for a migratory worker.

**Form of Certificates and Reports; Rules and Regulations of State Board of Health**

Sec. 7. The State Board of Health shall have the power to prescribe the form of the certificates and reports required to be furnished the State Health Department by the provisions of this Act and shall also have the power to pass such reasonable rules and regulations as it deems necessary to carry out the provisions of this Act, and such rules and regulations it deems necessary to prevent, control and eradicate the disease of tuberculosis.

**Director of the Division of Tuberculosis Services; Personnel; Tuberculosis Advisory Committee; Credentials Committee**

Sec. 8. The Commissioner of Health, upon the recommendation of the State Board of Health and with the advice of the Tuberculosis Advisory Committee, shall appoint a Director of the Division of Tuberculosis Services, who shall be a person licensed to practice medicine in this state, with a comprehensive knowledge of tuberculosis control and management, to carry out the provisions of this Act and to perform such other duties as may be imposed upon the State Department of Health, relating to the prevention, control and eradication of the disease of tuberculosis and to the care and treatment of those afflicted with tuberculosis. The Commissioner of Health and the State Board of Health are directed to confer with and seek the advice of the Tuberculosis Advisory Committee hereinafter provided for.

The Commissioner of Health is hereby authorized to employ such additional personnel as he deems necessary in the performance of his duties concerning the enforcement of the provisions of this Act and relating to the prevention, control and eradication of the disease of tuberculosis.

The Governor, as soon as practicable, shall appoint a committee to be known as the Tuberculosis Advisory Committee. The Tuberculosis Advisory Committee shall be composed of twelve (12) members who shall serve without compensation, but who shall receive reimbursement for expenses incurred in carrying out their duties imposed by this Act. The Governor shall designate four (4) members of the Tuberculosis Advisory Committee to serve for a

term ending August 31, 1967; and shall designate four (4) members to serve for a term ending August 31, 1969; and shall designate four (4) members to serve for a term ending August 31, 1971. Thereafter, all members of the Tuberculosis Advisory Committee shall serve for a term of six (6) years. All vacancies occurring on the Tuberculosis Advisory Committee shall be filled by appointment by the Governor for the unexpired term.

The Tuberculosis Advisory Committee shall consist of a representative licensed to practice medicine by the State Board of Medical Examiners, a representative from the Texas Tuberculosis Association, a representative from the Texas Thoracic Society, a representative from the Texas Chapter of the American College of Chest Physicians, a representative from the Texas Hospital Association; and seven (7) members chosen from the public at large, no more than three (3) of whom shall be licensed to practice medicine in this state.

The Tuberculosis Advisory Committee will meet periodically and advise the State Board of Health, the State Commissioner of Health and the Director of the Division of Tuberculosis Services and work with official and voluntary agencies involved in the prevention, control and eradication of the disease of tuberculosis, with the view of making recommendations as will most effectively prevent, control and eradicate the disease of tuberculosis. The Committee shall provide the Governor, the Legislature and the Board of Health with a written annual program evaluation.

The Commissioner of Health shall appoint a Credentials Committee as an advisory group to the Director of the Division of Tuberculosis Services. The Credentials Committee shall consist of persons licensed to practice medicine in this state in a number to be determined by the Health Commissioner, as can most effectively advise and work with the Director of the Division of Tuberculosis services in the performance of the duties of the Director, as the duties relate to the development and administration of a contract medical care and treatment program as provided in Section 2 of this Act.

**Violations; Punishment**

Sec. 9. Any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) and/or by imprisonment in the county jail for not more than thirty (30) days.

**Cumulative Effect**

Sec. 10. The provisions of this Act shall be cumulative of all other power now possessed by the State Department of Health relating to the care and treatment of those afflicted with tuberculosis and relating to the control and sanitary management of tuberculosis, and shall be cumulative of the provisions of House Bill No. 421, Acts of the 56th Legislature, Regular Ses-

sion, 1959, Chapter 181, codified in Vernon's as Article 4477-11, Vernon's Civil Statutes.

[Acts 1965, 59th Leg., p. 124, ch. 51.]

**Art. 4477-13. Treatment of Respiratory Diseases at East Texas Chest Hospital; Designation as State Agency for Research and Training**

Sec. 1. (a) It is the policy of the State of Texas to provide a program of healing and treatment of the citizens of this State who are afflicted with chest diseases.

(b) In order to effectively and economically carry out this policy, there is hereby established at the East Texas Chest Hospital a program of case-finding and treatment, both inpatient and outpatient, of all chest disease.

Sec. 2. (a) The East Texas Chest Hospital shall be the agency of the State to conduct research, develop techniques and procedures, provide training and teaching directly or with contracts with other agencies of this State, and be the primary facility for carrying out this policy.

(b) The State Board of Health shall be responsible for carrying out the provisions of this Act. The board may accept and administer gifts and grants of money in whole or on a formula basis from the federal government and from any individual, corporation, trust, federal or state vocational rehabilitation program, or foundation to carry out the purpose of this Act, and shall use any funds appropriated by the Legislature for this program to operate the program.

(c) The board may also establish necessary rules and procedures to cooperate with private institutions and individual doctors of medicine for the dissemination of research findings, treatment techniques, and procedures as a part of the educational policies of the Act.

Sec. 3. Admission to the institution shall be subject to such rules and regulations as may be promulgated by the superintendent from time to time, which shall include written application from the patient or from the guardian of the patient or from some friend or relative of the patient. Such written application shall be upon such forms as may be prescribed by the superintendent and shall show the following:

- (1) Name of patient.
- (2) Sex of patient.
- (3) Age and nativity of patient.
- (4) A complete statement of the location, description, and value of any property, real or personal, owned, possessed, or held by the patient or by the guardian of the patient.

(5) The name of all persons legally liable for the support of the patient, together with a complete statement of the location, description, and value of any property, real or personal, owned, possessed, or held by any such person.

(6) The residence of the patient for a period of at least two years next preceding the date of application.

(7) The occupation, trade, profession, or employment of the patient.

(8) The names and addresses of the parents, children, brothers, and sisters, and other responsible relatives, if any, of the patient.

(9) The names, addresses, and ages of any relatives who are or who may have been similarly afflicted.

(10) Such other and further information or statements as may be required by the superintendent.

Sec. 4. Every application shall be accompanied by a written request from the attending physician of the patient requesting the admission of such patient, which shall be in such form as may be prescribed by the superintendent and shall show the following:

(1) A statement from the physician that he has adequately examined the patient and that such patient has, or is suspected of having, a chest disease, together with a statement showing the duration of the disease, if known, and indicating any accompanying bodily disorder or disorders the patient may have at the time of application.

(2) Such other and further information as may be required by the superintendent.

Sec. 5. No person shall be admitted to the institution until the superintendent is satisfied that all requirements of this Act have been met, subject to such rules and regulations as may be promulgated by the superintendent from time to time governing the admission of patients thereto.

Sec. 6. A schedule of minimum fees and charges shall be established hereunder by the superintendent, which shall conform to the fees and charges customarily made for similar services in the community in which such services are rendered.

Sec. 7. The State Board of Health may formulate plans and policies for utilizing the program created by this Act at the East Texas Tuberculosis Hospital, in connection with any other agency, institution, or facility of this State, including but not limited to research, treatment, study, and training.

[Acts 1969, 61st Leg., p. 1664, ch. 528, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 1893, ch. 561, § 1, eff. Aug. 30, 1971.]

**CHAPTER FOUR C. KIDNEY DISEASE**

**Art. 4477-20. Kidney Health Care Act**

Short Title

Sec. 1. This Act shall be known and may be cited as the "Texas Kidney Health Care Act."

## Purpose

Sec. 2. The State of Texas hereby finds and declares that one of the most serious and tragic problems facing the public health and welfare is the death of hundreds of persons in the State of Texas each year from chronic kidney disease, when the present state of the medical art and technology could return most of these stricken individuals to a socially productive life. Advances and discoveries in the treatment of patients suffering from chronic kidney disease now allow, not only mere survival, but rehabilitation of such patients to their normal occupations and activities. Presently, these patients are dying for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. No parallel situation exists in the public health and welfare today where techniques have been developed for the diagnosis and prevention of disease which would save lives, yet at the same time people continue to progress to chronic kidney disease and death only for the lack of facilities for diagnosis and treatment. The State of Texas hereby recognizes its responsibility to its citizens to allow them to keep their health without being pauperized and to use the resources and organization of the state in gathering and disseminating information on the prevention and treatment of chronic renal disease. It is imperative that a comprehensive program to combat kidney disease be implemented through the combined and correlated efforts of state and local governments, medicine, universities, non-profit organizations and individuals. The program provided by this Act is designed to bring to bear all possible resources of the state and to coordinate the efforts of the state in this vital matter of public health.

## Division of Kidney Health Care; Creation and Powers

Sec. 3. For the purpose of administering and carrying out the provisions of this Act, there is hereby created within the State Department of Health a Division of Kidney Health Care to be administered by the State Board of Health, hereinafter referred to as the board, which is hereby empowered and authorized to:

(1) Establish and maintain standards for the accreditation of all facilities designed or intended to deliver care or treatment for sufferers from chronic kidney disease;

(2) Determine the terms, conditions and standards for the eligibility of persons suffering from chronic kidney disease for aid, care or treatment provided under the provisions of this Act;

(3) Cooperate with private, public, civic, municipal, state or federal agencies to facilitate the availability of adequate care to all citizens suffering from chronic kidney disease;

(4) Institute and supervise educational programs for the public and for health

providers with respect to chronic kidney disease and the prevention and treatment thereof. The board may utilize existing programs and groups for this purpose, whether or not such programs and groups are governmental;

(5) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic kidney diseases, including dialysis and other medical procedures and techniques which will have a life-saving effect in the care and treatment of persons suffering from these diseases;

(6) Institute and carry on educational programs among physicians, hospitals, public health departments, and the public concerning chronic kidney diseases, including the dissemination of information in the conducting of educational programs concerning the prevention, care and treatment of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases;

(7) Conduct surveys of all existing facilities within the state having to do with the diagnosis, evaluation and treatment of patients with kidney disease and to prepare and submit its findings and a specific program of action;

(8) Evaluate the need for the creation of local or regional facilities and for the establishing of a major kidney research center;

(9) Develop and administer scientific investigations into the cause, prevention, methods of treatment and cure of kidney diseases, including research into transplantation of kidneys;

(10) Develop techniques for an effective method of mass testing for the detection of kidney diseases and urinary tract infections;

(11) Report to the Governor of the State of Texas and to the legislature, annually on or before February 1 of each year, its findings, a progress report, its activities carried on under this Act and the state's total need in this area;

(12) Enter into such contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this Act. Such contracts may provide for payment by the state, within the limits of funds available, for material, equipment or services;

(13) Promulgate rules and regulations necessary to provide adequate kidney care and treatment for citizens of the State of Texas and to carry out the purposes and intent of this Act.



Authority Under Act

Sec. 4. The board shall provide kidney care services directly or through public or private resources to individuals determined by the board to be eligible therefor, and in carrying out the purposes of this Act, the board is authorized to:

(1) Cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this Act to eligible individuals, in studying the public health and welfare needs involved therein, and in planning, establishing, developing, and providing such programs or facilities and services as may be necessary or desirable, including those jointly administered with state agencies;

(2) Enter into reciprocal agreements with other states;

(3) Establish or construct rehabilitation facilities and workshops, make grants to public agencies, make contracts or other arrangements with public and other non-profit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this Act;

(4) Conduct research and compile statistics relating to the provision of kidney care services or to the need for such services by disabled or handicapped individuals;

(5) Provide for the establishment, supervision, management and control of kidney care facilities;

(6) Contract with schools, hospitals, private individuals, corporations and other agencies and with doctors, nurses, technicians and other persons for training, physical restoration, transportation and other services necessary in connection with the treatment and care of persons suffering from kidney diseases.

Cooperation with Federal Government

Sec. 5. The board shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this Act or of any federal statute or rule or regulation promulgated pursuant thereto pertaining to the prevention, care or treatment of kidney diseases or the care or treatment or rehabilitation of persons suffering from kidney diseases, and to this end may adopt such rules, regulations or methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements, arrangements, or plans for the prevention, care, or treatment of kidney diseases.

Obtaining Federal Funds

Sec. 6. The board is authorized to comply with such requirements as may be necessary to obtain federal funds in the maximum amount

and most advantageous proportions possible in order to carry out the purposes and objectives of this Act.

Gifts and Donations

Sec. 7. The board is authorized to receive and use gifts and donations for carrying out the purposes of this Act.

Receipt and Disbursement of Funds; Audit; Reporting Procedure

Sec. 8. The state treasurer is hereby authorized to receive all moneys appropriated by congress and allotted to Texas for carrying out the purposes of this Act or agreements, arrangements, or plans authorized thereby; and to make disbursements therefrom upon the certification of the board. All public moneys available to the board shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the board in local depositories to assure that non-public funds made available to the board through gift or bequest, by local organizations desiring to participate in projects for persons suffering from kidney diseases or by endowment or otherwise, are expended in a manner consistent with the purposes of this Act, and the board shall comply with such reporting procedures as the state auditor may prescribe for the board's acceptance, holding, investment and use of non-public funds.

Reimbursement of State for Cost of Treatment

Sec. 9. (a) Any person certified by the board as eligible for treatment under the provisions of this Act for whose treatment the board has paid or the person or persons liable for the debts of such patient shall reimburse the State of Texas for the cost of such treatment subject to the following limitations:

(b) no person or persons liable for repayment under Subsection (a) of this section shall be liable for more than the sum of:

(1) any proceeds of insurance, group health plan, or prepaid medical care, provided that such proceeds are paid to the insured and are paid by the insurer by reason of liability for the payment of the cost of medical treatment, and

(2) five percent of the adjusted gross income, as defined in the United States Internal Revenue Code for purposes of federal income tax and as amended from time to time, of such person or persons, less the yearly premiums such person or persons have paid on insurance which resulted in proceeds under Subsection (b)(1) hereof.

Nothing in this section shall be construed to affect any arrangement for payment of costs directly to a medical provider by an insurance company, group health plan, or prepaid medical care plan.

## Appropriations Authorized

Sec. 10. The legislature shall make such appropriations as may be necessary to carry out all the provisions of this Act.

## Severability

Sec. 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

## Repealer

Sec. 12. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed.

[Acts 1973, 63rd Leg., p. 106, ch. 57, eff. April 26, 1973.]

## CHAPTER FIVE. COUNTY HOSPITAL

## Article

- 4478. Authority.
- 4478a. Intervals Between Elections.
- 4479. Board of Managers.
- 4480. Powers of Board.
- 4481. Clinics.
- 4482. School for Children.
- 4483. Health Bulletins.
- 4484. Records.
- 4485. Superintendent.
- 4486. Admission of Patients.
- 4487. Support of Patients.
- 4488. Inspection.
- 4489. Poorhouse.
- 4490. Additional Hospitals.
- 4491. Contract with Hospital.
- 4492. Contracts with Cities.
- 4493. Adequate Facilities.
- 4493a. Validation of County Hospital Bond Elections in Counties Containing Large City.
- 4494. Counties May Join.
- 4494a. Lease of County Hospital.
- 4494b. Lease of County Hospitals in Counties of 30,900 to 31,000 Population.
- 4494c. Construction, Maintenance, and Operation of Hospitals by Counties of 17,600 to 17,700 Population; Leasing of Hospital.
- 4494c-1. Use of Hospital Operating Funds for Improvements to Hospitals in Counties of 19,500 to 19,680.
- 4494d. Lease of County Hospitals in Counties of 23,825 to 23,850.
- 4494e. Lease of County Hospitals in Counties of 7,680 to 7,700.
- 4494f. Leases of Hospitals in Counties of 29,760 to 29,960.
- 4494g. Establishment of Hospital in Counties of Over 92,600 and Having a City of Over 57,250; Lease of Hospital.
- 4494h. Lease of Hospitals in Counties of 5,000 to 10,390.
- 4494i. Joint Establishment and Operation of Hospitals by Counties and Cities or Towns.
- 4494i-1. Joint County-City Hospital Boards.
- 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under \$20,000,000.
- 4494k. Sale or Lease in Counties with Population of 69,080 to 69,100.
- 4494l. Lease of County Hospital by Any County.
- 4494m. Sale of County Hospital in Counties of 22,000 to 22,800.

## Article

- 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County.
- 4494n-1. Validating Organization and Creation of County-wide Hospital Districts in Counties of 190,000 or More and Galveston County.
- 4494n-2. Sale and Lease Back of Land, Buildings, Equipment, etc., for Hospital District Purposes.
- 4494o. Public Hospital Districts; Counties of 75,000 or Less.
- 4494p. Optional Hospital District Law of 1957.
- 4494q. Particular Hospital Districts.
- 4494r. County Hospital Authority Act.
- 4494r-1. Issuing and Refunding Revenue Bonds.
- 4494r-2. Issuance of Revenue Bonds in Counties of 200,000 or More.
- 4494r-3. County Hospital Revenue Bonds; Issue; Refunding.
- 4494r-4. Adoption of Tax Rolls by Hospital Districts; Board of Equalization; Assessment and Collection of Taxes.
- 4494s. Parking Stations Near Hospitals in Counties of 900,000 or More.

## Art. 4478. Authority

The commissioners court of any county shall have power to establish a county hospital and any medical or other health facilities and to enlarge any existing hospitals or facilities for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, or any medical or other health facilities, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital or facilities. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital or facilities and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.
2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital or facilities. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.
3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.
4. To issue county bonds to provide funds for the establishing, enlarging and

equipping of said hospital or facilities and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital or facilities, or both.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital or facilities, and apply the same in accordance with the terms of the gift.

7. The Commissioners Court may lease all or part of any medical facility so constructed, purchased or acquired under this Act.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1332, ch. 502, § 1, eff. June 14, 1973.]

#### Art. 4478a. Intervals Between Elections

The provision contained in Article 4478, Revised Civil Statutes of Texas of 1925, which restricts the presentation of petitions to the Commissioners Court of a county for the establishment of a county hospital to intervals of not less than twelve (12) months shall not be applicable to counties which at the time of presentation of any such petition have no county-owned hospital. Provided however that nothing in this Article will permit the Commissioners Court to submit a bond election for the above purposes to the voters of their respective county more than twice in any twelve-month period.

[Acts 1953, 53rd Leg., p. 13, ch. 18, § 1.]

#### Art. 4479. Board of Managers

When the Commissioners Court shall have acquired site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint six (6) resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital. The term of office of each member of said board shall be two (2) years, except that in making the first appointments after this Act takes effect three (3) members shall be appointed for one (1) year and three (3) members for two (2) years so that thereafter three (3) members of said board will be appointed every two (2) years. In case of a tie vote of said board the deadlock may be voted off one way or the other by the county judge of the county. Appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three (3) consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers may receive compensation for their services to consist of such insurance plan as may be deemed necessary by the Commissioners Court to provide hospital-

ization insurance. The managers shall be allowed their actual and necessary traveling and other expenses within this state to be audited and paid by the Commissioners Court in the same manner as other expenses of the hospital. Any manager after being cited may at any time for cause be removed from office by said court.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 268, ch. 189, § 1; Acts 1961, 57th Leg., p. 456, ch. 227, § 1.]

#### Art. 4480. Powers of Board

The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

The board shall also appoint a staff of visiting physicians who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board shall fix the salaries of the superintendent and all other officers and employes within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners court at which appropriations for the ensuing year are to be considered.

[Acts 1925, S.B. 84.]

#### Art. 4481. Clinics

The board of managers may also establish and operate an outpatient department or free dispensary and clinic at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over. They shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board shall also appoint one or

more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries within the limits of the appropriation made therefor by the commissioners court.

[Acts 1925, S.B. 84.]

#### Art. 4482. School for Children

The board may also establish, at the hospital or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this law. Said board shall appoint a teacher or teachers, specially qualified, to instruct and care for the pupil inmates of said school. Said board shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician, to attend the inmates of said school, and to supervise their care and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils.

[Acts 1925, S.B. 84.]

#### Art. 4483. Health Bulletins

The State Board of Health, from time to time, shall make rules and regulations for the care of persons suffering from communicable disease and for the prevention and spread of such diseases; and prepare bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers shall, from time to time, purchase from the State Board of Health, at the actual cost of printing, printed copies of such rules and regulations, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the State Board of Health.

[Acts 1925, S.B. 84.]

#### Art. 4484. Records

The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners court and to any citizen of the county. The board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their pay-

ment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners court annually, and at such times as said court shall direct, a detailed report of the operation of the hospital dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes.

[Acts 1925, S.B. 84.]

#### Art. 4485. Superintendent

The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employes thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and maintain discipline therein, and enforce compliance with and obedience to all rules, bylaws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employes and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employes as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, he may discharge any such officer or employe at his discretion, after giving such officer or employe an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report as required by this law, and present the same to the board of managers who shall incorporate them in their report to the commissioners court.

He shall receive into the hospital, under the general direction of the board of managers, in order of application, or according to the urgen-

cy of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners court of any adjacent county, which has contracted with the board for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex, color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board, and the said board shall make such final disposition of the case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office.

[Acts 1925, S.B. 84.]

#### Art. 4486. Admission of Patients

Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he finds that such person is suffering from any illness, disease or injury may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital and shall be forwarded by the superintendent thereof free to any reputable physician in the county upon request. So far as practi-

cable, applications for admission to the hospital shall be made upon such forms. The superintendent upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital. Every application shall be filed and recorded in a book kept for that purpose in the order of its receipt. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance, in whole or in part. No patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital. No officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services.

[Acts 1925, S.B. 84.]

#### Art. 4487. Support of Patients

Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal.

[Acts 1925, S.B. 84.]

**Art. 4488. Inspection**

The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts, and records pertaining to the hospital, and shall furnish copies, abstracts, and reports whenever required by them. All hospitals established or maintained under the provisions of this law shall be subject to inspection by any duly authorized representative of the State Board of Health, or any State board of charities that may hereafter be created, and of the commissioners court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital.

[Acts 1925, S.B. 84.]

**Art. 4489. Poorhouse**

Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poorhouse or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to each provision of this law, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners court shall in like manner be subject to each provision of this law.

[Acts 1925, S.B. 84.]

**Art. 4490. Additional Hospitals**

When deemed advisable by the commissioners court, and approved by the State Board of Health, a county may maintain more than one county hospital for the purpose aforesaid.

[Acts 1925, S.B. 84.]

**Art. 4491. Contract with Hospital**

Any commissioners court of any county which has no city with a population of more than ten thousand persons, may contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established such hospital, the board of managers may contract with any regularly incorporated society or hospital or city or town within the county maintaining a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital.

[Acts 1925, S.B. 84.]

**Art. 4492. Contracts with Cities**

Sec. 1. Any Commissioners Court may cooperate with and join the proper authorities of

any city having a population of ten thousand (10,000) persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said Court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such Court and city authorities.

Sec. 2. Any Commissioners Court may cooperate with and join the proper authorities of any two (2) or more cities in the establishment, building, equipment and maintenance of a hospital in said county, and to appropriate such funds as may be determined by said Court, after a joint conference with the authorities of such cities or towns, and the management of such hospital shall be under the joint control of such Court and city authorities.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 526, ch. 190, § 1.]

**Art. 4493. Adequate Facilities**

Where no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, the commissioners court of each county which may have a city with a population of more than ten thousand persons, within six months from the time when such city shall have attained such population, such population to be ascertained by such court in such manner as may be determined upon resolution thereof, shall provide for the erection of such county hospital or hospitals as may be necessary for that purpose, and provide therein a room or rooms, or ward or wards for the care of confinement cases, and a room or rooms or ward or wards for the temporary care of persons suffering from mental or nervous disease, and also make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the State Board of Health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county available for such purpose, issuance of county warrants and script, the commissioners court shall submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds.

[Acts 1925, S.B. 84.]

**Art. 4493a. Validation of County Hospital Bond Elections in Counties Containing Large City**

Sec. 1. In each instance where a county containing a city of not less than one hundred

and fifty thousand (150,000) population, according to the last preceding Federal Census, has held an election resulting favorably to the issuance of bonds for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a county hospital or sanitarium, or for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a city-county hospital or sanitarium, the act of the Commissioners Court in calling and noticing said election, the election, the act of the Commissioners Court in canvassing the returns of such election and declaring the results thereof, each and all are hereby expressly validated; all such bonds heretofore executed, approved by the Attorney General, registered by the Comptroller, sold and delivered, are hereby in all things validated; and all such bonds so voted but not heretofore sold, when they shall have been executed, approved by the Attorney General, and registered by the Comptroller, shall constitute valid and binding obligations of such county.

Sec. 2. Provided however, that this Act shall not affect any litigation pending at the time this Act becomes effective, in which the validity of any such election or bonds is being questioned.

[Acts 1937, 45th Leg., 2nd C.S., p. 1920, ch. 37.]

#### Art. 4494. Counties May Join

Where found to be more practicable, and when approved by the State Board of Health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this law, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers and be subject to the same liabilities as a single county, herein provided for.

[Acts 1925, S.B. 84.]

#### Art. 4494a. Lease of County Hospital

Any county in this State having a population of not less than 46,600 and not more than 48,000 according to the United States Census of 1920, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

[Acts 1929, 41st Leg., 2nd C.S., p. 170, ch. 86, § 1.]

#### Art. 4494b. Lease of County Hospitals in Counties of 30,900 to 31,000 Population

Any county in this State having a population of not less than thirty thousand nine hundred (30,900) and not more than thirty-one thou-

sand (31,000) according to the United States Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court of said county and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

[Acts 1937, 45th Leg., 1st C.S., p. 1754, ch. 9, § 1.]

#### Art. 4494c. Construction, Maintenance, and Operation of Hospitals by Counties of 17,600 to 17,700 Population; Leasing of Hospital

Sec. 1. In any County in this State having a population of not less than seventeen thousand six hundred (17,600) or not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, in which are established hospitals or in which hospitals may be constructed, a direct tax of not over Ten Cents (10¢) on the valuation of One Hundred Dollars (\$100.00) on all real and personal property within such County may be authorized and levied by the Commissioners' Court of such County for the purpose of erecting buildings and other improvements, equipping such hospital, and for maintaining and operating such hospital, provided that all such levy of taxes shall be submitted to the qualified tax paying voters of the County and a majority vote shall be necessary to levy such taxes.

Sec. 2. Any County in this State having a population of not less than seventeen thousand six hundred (17,600) and not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, shall have authority to lease any County Hospital belonging to said County now in existence or that may hereafter be constructed, to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court on leasing such hospital shall be evidenced by order of the Commissioners' Court which shall be recorded in the minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 851.]

#### Art. 4494c-1. Use of Hospital Operating Funds for Improvements to Hospitals in Counties of 19,500 to 19,680

In all counties in this State with not less than 19,500 inhabitants or more than 19,680 inhabitants according to the last preceding federal census, the Commissioners Court may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of county hospital facilities.

[Acts 1965, 59th Leg., p. 917, ch. 451; Acts 1971, 62nd Leg., p. 1846, ch. 542, § 116, eff. Sept. 1, 1971.]

**Art. 4494d. Lease of County Hospitals in Counties of 23,825 to 23,850**

Any county in this State having a population of not less than twenty-three thousand, eight hundred and twenty-five (23,825) and not more than twenty-three thousand, eight hundred and fifty (23,850) inhabitants according to the last preceding Federal Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 849, § 1.]

**Art. 4494e. Lease of County Hospitals in Counties of 7,680 to 7,700**

Any county in this State having a population of not less than seven thousand, six hundred and eighty (7,680) and not more than seven thousand and seven hundred (7,700) according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 848, § 1.]

**Art. 4494f. Leases of Hospitals in Counties of 29,760 to 29,960**

Any county in this State having a population of not less than twenty-nine thousand, seven hundred and sixty (29,760) and not more than twenty-nine thousand, nine hundred and sixty (29,960) inhabitants, according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by the order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1941, 47th Leg., p. 428, ch. 258, § 1.]

**Art. 4494g. Establishment of Hospital in Counties of Over 92,600 and Having a City of Over 57,250; Lease of Hospital**

Sec. 1. In all counties of the State having a population of not less than ninety-two thousand, six hundred (92,600), according to the last preceding United States Census, containing an incorporated city or cities or an incorporated town or towns of not less than fifty-seven thousand, two hundred and fifty (57,250) population, each according to the last preced-

ing United States Census, the Commissioners Court of such county and the governing body of any such city or town may establish, erect, equip, maintain and operate a hospital for the care and treatment of sick, infirm, and/or injured inhabitants of such county and/or city or town. By agreement between such bodies, the cost thereof may be divided between such county and city or town.

Sec. 2. If there be insufficient moneys in the respective general funds of such county and/or city or town for such purpose, the Commissioners Court and/or governing body of the city or town may submit to the qualified, taxpaying voters of the county and/or city or town, respectively, at a special or regular election or elections the proposition of whether such a hospital should be established, erected, equipped, maintained and operated by the county and city or town and a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town levied for such purpose and/or whether the county and/or city or town should issue its bonds in an amount not exceeding that specified in such proposition to wholly or partially defray the expense of establishing, erecting, and/or equipping such hospital, and provide for the payment of interest on such bonds and the creation of a sinking fund for the payment thereof out of a direct tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town.

Sec. 3. If such proposition shall receive a majority of the votes cast by the voters at such elections, the Commissioners Court and/or governing body of the city or town may assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town respectively, for such purpose. If, however, the Commissioners Court and/or the governing body of such city or town deem it advisable and the question has received a majority vote at the election called for in the preceding Section, either or both of such bodies may, in the manner provided for the issuance of other bonds of such county and/or city or town in an amount not exceeding that specified in the proposition submitted at such election, assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town for the purpose of paying the interest on such bonds and creating a sinking fund for the payment thereof.

Sec. 4. Any hospital heretofore or hereafter erected, established, equipped, maintained, or operated by such a county and such a city may be leased by such county and city or town upon such terms as are agreeable to such county and city or town and the lessee.

[Acts 1941, 47th Leg., p. 420, ch. 250.]



**Art. 4494h. Lease of Hospitals in Counties of 5,000 to 10,390**

(a) Any county in this State having a population of not less than five thousand (5,000) and not more than ten thousand, three hundred and ninety (10,390) inhabitants according to the last preceding Federal Census, shall have authority to lease any county hospital or a portion thereof belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital or a portion thereof shall be evidenced by order of the Commissioners Court, which order shall be recorded in the minutes of said Court. The proposed lease of such hospital or portion thereof shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

(b) When the Commissioners Court of any such county owning and operating its hospital shall determine and find that it is to the best interest of such county that such hospital or portion thereof be leased, it shall be the duty of the Court to fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform all qualified electors of said county and all other persons who may be interested in the question of the leasing of such county hospital or portion thereof of the time and place of the hearing and of their right to appear at such hearing and contend for or protest the proposed leasing of the county hospital or portion thereof. The county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

(c) If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital or portion thereof shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital or portion thereof and shall not finally lease the same unless the proposition to lease such county hospi-

tal or portion thereof is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of leasing such hospital or portion thereof. Any person interested may appear before the Court in person or by attorney and contend for or protest the leasing of such county hospital or portion thereof. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital or portion thereof shall be leased. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

(d) If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing of such hospital or portion thereof would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased. Such Court shall thereupon be fully authorized and empowered to lease such county hospital or portion thereof to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing such hospital or portion thereof shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property, taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital or portion thereof shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital or portion thereof for a period in excess of five (5) years and shall not finally lease the same for a period in excess of five (5) years unless the proposition to lease such hospital or portion of is sustained by a majority of votes cast at said election.

[Acts 1941, 47th Leg., p. 142, ch. 107, § 1; Acts 1949, 51st Leg., p. 224, ch. 124, § 1; Acts 1973, 63rd Leg., p. 1190, ch. 437, § 1, eff. June 14, 1973.]

**Art. 4494i. Joint Establishment and Operation of Hospitals by Counties and Cities or Towns**

**Establishment and Operation Authorized; Tax to Pay Bonds**

Sec. 1. Any county of the State and any incorporated city or town within such county, acting through the Commissioners Court of such county and the governing body of such city or town, may jointly establish, erect, equip, maintain and operate a hospital or hospitals for the care and treatment of the sick, infirm, and/or injured; and for the purposes of establishing, erecting, equipping, maintaining and operating such a hospital or hospitals, the Commissioners Court of any county and the governing body of any city or town within such county may, by resolution or other appropriate action, confer upon, delegate to and grant to a Board of Managers, as hereinafter provided, full and complete authority to establish, erect, equip, maintain and operate such hospital or hospitals. Such cities or towns and counties that have heretofore issued and sold bonds for the specific purpose of jointly establishing, erecting, equipping, maintaining and operating such joint county-city hospital may finance such hospital or hospitals out of general revenues and are each, respectively, hereby authorized to levy and collect a tax, not to exceed Ten (10) Cents per one hundred dollar valuation on the property subject to taxes therein, for such purposes.

**Board of Managers; Membership; Term; Vacancies**

Sec. 2. The Board of Managers shall be composed of seven (7) members; three (3) of this number shall be appointed by the Commissioners Court of such county, three (3) shall be appointed by the governing body of such city or town, and one shall be appointed by the Commissioners Court of such county and the governing body of such city or town acting jointly as one appointive body. The Commissioners Court of such county shall appoint to the Board one member for a term of office expiring at the end of two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment. In like manner, the governing body of such city or town shall appoint to the Board one member for a term of office expiring two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment; and similarly, the Commissioners Court and the governing body of such city or town, acting together as an appointive body, shall appoint one member for a term of office expiring six (6) years from date of appointment. Thereafter, at the expiration of each term of office of the members so appointed to such Board, the Commissioners Court and the governing body of such city or town acting jointly as an appointive body, shall

each respectively make, and continue to make, similar appointments to such Board for a term of office of six (6) years each. Any vacancy occurring during the term of office of any member, whether by resignation or death, shall be filled for the unexpired portion of such term by the particular appointive body previously making the appointment of the resigning or deceased member.

**Presiding Officer; Quorum**

Sec. 3. Such Board of Managers shall select a chairman or presiding officer from among their number who shall preside over all meetings of the said Board, and shall sign all contracts, agreements and other instruments made by said Board on behalf of such county and such city or town. A majority of the members of the Board shall constitute a quorum with full authority and power to act.

**Powers of Board**

Sec. 4. Such Board of Managers shall have full and complete authority to enter into any contract connected with or incident to the establishment, erection, equipping, maintaining or operating such hospital or hospitals, and in this connection shall have authority to disburse and pay out all funds set aside by such county and such city or town for purposes connected with such hospital or hospitals, and such action by such city or town as though such action had been taken by the Commissioners Court of such county or governing body of such city or town.

**Financial Statements; Budget**

Sec. 5. Once each year such Board of Managers shall prepare and present to such Commissioners Court and the governing body of such city or town a complete financial statement of the financial status of such hospital or hospitals, and shall submit therewith a proposed budget of the anticipated financial needs of such hospital or hospitals for the ensuing year. On the basis of such financial statement and budget the Commissioners Court of such county and the governing body of such city or town shall appropriate or set aside for the use of such Board of Managers in the operation of such hospital or hospitals the amount of money which seems proper and necessary for such purpose.

**Contributions**

Sec. 6. The Commissioners Court of such county and the governing body of such city or town may contribute to the funds necessary for such hospital or hospitals in whatever proportion may be determined by them by agreement.

**Management and Control**

Sec. 7. In connection with the erection and equipping of such hospital or hospitals said Board of Managers shall have the authority to determine the manner of expending any funds that may have been provided by such county and such city or town for such purpose, whether by the issuance of bonds or other obliga-

tions, or by appropriations from other funds of such county and city or town, it being the intention by this Act to grant to such Boards the complete authority to manage and control all matters affecting such hospitals, reserving to such county and city or town the right only to appoint members to such Board of Managers and to approve the annual budget hereinabove provided for.

**Act Cumulative**

Sec. 8. This Act is cumulative of all other Acts relating to city and county hospitals.

[Acts 1943, 48th Leg., p. 691, ch. 383.]

**Art. 4494i-1. Joint County-City Hospital Boards**

**Resolutions Creating Boards; Designation**

Sec. 1. The commissioners court of any county, and the governing body of any city (including any Home Rule Charter City) located wholly or partially in said county, shall be authorized to adopt resolutions creating a joint county-city hospital board, without taxing powers, to constitute a public agency and body politic, and to be designated the "\_\_\_\_\_ County-City of \_\_\_\_\_, Texas, Hospital Board."

**Directors; Appointment; Boards as Separate Entities**

Sec. 2. Said Hospital Board shall consist of seven Directors, to be appointed and serve as hereinafter provided, and said Hospital Board shall constitute a joint agent of said county and city for hospital purposes, and shall act solely for the joint benefit of said county and city. Although acting as such joint agent, said Hospital Board shall constitute a separate entity in the exercise and performance of the powers, duties, and functions authorized by this Act, and with reference thereto said Hospital Board shall act and proceed independently, and may sue and be sued separately, in its own name, capacity, and behalf.

**Terms of Directors; Reimbursement for Expenses; Chairman and Secretary; Officers**

Sec. 3. In the resolution of the commissioners court creating said Hospital Board four Directors of said Board shall be appointed, with two being designated to serve for two-year terms of office, and with two being designated to serve for one-year terms of office. At the expiration of the term of office of any Director appointed by the commissioners court, said commissioners court shall appoint his successor to serve for a two-year term of office. In the resolution of the governing body of the city creating said Hospital Board three Directors shall be appointed, with two being designated to serve for two-year terms of office, and with one being designated to serve for a one-year term of office. At the expiration of the term of office of any Director appointed by the governing body of said city, said governing body shall appoint his successor to serve for a two-year term of office. It is the intention of this Act that at all times said Hospital Board shall consist of four Directors appointed by said

commissioners court and three Directors appointed by the governing body of said city. All Directors shall serve until their successors are appointed, except that in the case of any vacancy the unexpired term of office shall be filled by the appointment of a Director by said commissioners court or the governing body of said city, as the case may be, which appointed the Director whose death or resignation has caused the vacancy. All Directors shall be eligible to succeed themselves in office. Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as Directors, to the extent authorized and permitted by the Hospital Board. The Directors shall elect one of their number as Chairman of the Hospital Board, and he shall preside at meetings of said Board and perform such other duties and functions as are prescribed by the Board. The Chairman of the Hospital Board shall have a vote the same as the other Directors. The Directors shall elect a secretary of the Hospital Board, who may or may not be a Director, and who shall be the official custodian of the minutes, books, records, and seal of said Board, and who shall perform such other duties and functions as are prescribed by the Board. The Directors shall be authorized to elect any other officers of said Hospital Board as they deem necessary or advisable; and said Directors shall be authorized to appoint or employ such agents, employees, and officials as they deem necessary or advisable to carry out any power, duty, or function of said Hospital Board. Said Hospital Board shall act and proceed by and through resolutions adopted by the Directors, and the affirmative vote of four Directors shall be required to adopt a resolution.

**Acquisition of Hospital Facilities; Purchase or Sale of Property; Donations**

Sec. 4. Said Hospital Board shall be authorized to purchase, construct, receive, lease, or otherwise acquire hospital facilities, and to improve, enlarge, furnish, equip, operate and maintain the same. Further, the Hospital Board shall be authorized to own, hold title to, receive, encumber, sell, lease, or convey, any interest in real or personal property, including gifts, grants, and donations from any source.

**Transfer of Hospital Facilities to Boards; Contracts for Care and Treatment of Needy Patients; Federal and State Funds**

Sec. 5. The county and the city, respectively, which created said Hospital Board shall be authorized to lease, or to convey and transfer the title or any other interest in, all or any part of their hospital facilities, including all real and personal property pertaining thereto, to said Hospital Board, upon such terms and conditions, if any, as shall be determined by the parties. It is provided, however, that said Hospital Board shall not be authorized to encumber, sell, lease, or convey any real or personal property unless such encumbrance, sale, lease, or conveyance is approved, prior to the

final consummation thereof, by resolutions of the commissioners court of said county and the governing body of said city, respectively. Said county and said city, respectively, further shall be authorized to enter into contracts with said Hospital Board for the care and treatment of indigent or needy patients, or for any other hospital services, and each shall be authorized to expend money and make payments to said Hospital Board pursuant to such contracts, and to levy ad valorem taxes, and to pledge any of their funds or resources, for the payments to be made under said contracts. Said Hospital Board shall be authorized to apply for, receive, and expend any available funds from the federal or state government for hospital purposes. Further, said county and said city, respectively, may adopt resolutions authorizing and designating such Hospital Board as the lawful agency to apply for, receive, and expend any available funds from the federal or state government for county or city hospital purposes: and to the extent of such authorization the Hospital Board may apply for, receive, and expend any such funds.

#### Bond Issue

Sec. 6. For the purpose of carrying out any power, duty, or function authorized by this Act, said Hospital Board shall be authorized to issue its revenue bonds to be payable from, and secured by a pledge of, all or any part of the revenues, income, or resources of the Hospital Board and the hospital facilities of said Board. Said bonds may be additionally secured by mortgages and deeds of trust on any real or personal property, and said Board may authorize the execution and delivery of trust indentures, or other forms of encumbrances to evidence same. Said Hospital Board shall have no right or power whatsoever to levy taxes of any nature, and all bonds issued by said Board shall contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by said Hospital Board." If so provided in the proceedings authorizing the issuance of the bonds, any required part of the proceeds from the sale thereof may be used for paying interest on the bonds during the period of the construction of any hospital facilities to be acquired through the issuance of said bonds, and for the payment of operation and maintenance expenses of said hospital facilities to the extent, and for the period of time, specified in said proceedings, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys may be invested, until needed, to the extent and in the manner provided in the Bond Resolution or any trust indenture executed in connection therewith.

#### Interest Rate; Additional Parity Bonds

Sec. 7. Said bonds may be issued to mature serially or otherwise within not to exceed 40 years from their date, and may be issued to bear interest at any rate or rates not to exceed

6% per annum. In the authorization of any such bonds, the Directors may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions as may be set forth in the proceedings authorizing the issuance of said bonds, all within the discretion of the Directors. Said bonds, and any interest coupons appertaining thereto, shall be negotiable instruments (provided that such bonds may be made registrable as to principal alone or as to both principal and interest), and they may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be executed, as provided by the Directors in the proceedings authorizing the issuance of said bonds. Said bonds may be sold at public or private sale and at a price and under such terms as shall be determined by the Directors, provided that the interest cost to said Hospital Board, including any discount on the bonds, shall not exceed 6% per annum calculated by the use of standard bond interest tables currently in use by insurance companies and investment banking companies.

#### Approval of Bond Issue

Sec. 8. Notwithstanding the foregoing provisions of this Act, said Hospital Board shall not deliver any bonds unless the issuance thereof is approved by resolutions adopted by the commissioners court of said county and the governing body of said city, respectively.

#### Charges for Services and Facilities

Sec. 9. All hospital facilities of said Hospital Board shall be operated for the use and benefit of the public, but it shall be the duty of said Board to establish and collect sufficient charges for services and facilities, and to utilize all other available sources of revenues and income, in order to pay all expenses in connection with the ownership, operation, and maintenance of its hospital facilities, to pay the principal of and interest on its bonds, and to create and maintain reserves and any other funds as provided in the proceedings authorizing the issuance of its bonds. In the proceedings authorizing the issuance of its bonds said Hospital Board may prescribe systems, methods, routines, and procedures under which its hospital facilities shall be operated and maintained.

#### Notice of Bond Resolution; Petition for Election; Adoption of Bond Resolution

Sec. 10. (a) Before authorizing the issuance of any bonds, other than refunding bonds, the Directors shall cause a notice to be prepared stating that the Directors of said Hospital Board intend to adopt a resolution (herein called the "Bond Resolution") authorizing the issuance of bonds, on a named date, and stating the maximum amount and maximum maturity thereof. Such notice shall be published once each week for two consecutive weeks in a newspaper having general circulation in the county and the city, with the first publication

thereof to be made at least fourteen days prior to the date set for adopting the Bond Resolution.

(b) If, prior to the date set for the adoption of the Bond Resolution, there is presented to the secretary of said Hospital Board a petition signed by not less than ten per centum (10%) of the qualified voters residing within the county and any part of the city which is not within the county, praying that the Directors order an election be held on the proposition of the issuance of the bonds, such bonds shall not be issued unless an election is held and such bonds are duly and favorably voted at said election. Such election shall be called by the Directors and held within said county and any part of the city which is not within the county, substantially in accordance with the procedures prescribed in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended. If no such petition is filed, the Bond Resolution may be adopted on the date set therefor, or within not to exceed thirty days thereafter, and the bonds may be issued and delivered without any election in connection with the issuance thereof or the creation of any encumbrance pertaining thereto. It is provided, however, that the Directors may call such election on their own motion, if they deem it advisable, on the proposition of the issuance of such bonds, without the filing of any petition.

#### Examination and Approval of Bonds; Registration

Sec. 11. All bonds permitted to be issued under this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with this Act he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

#### Refunding Bonds

Sec. 12. Any bonds issued under this Act may be refunded by the issuance of refunding bonds for such purpose, in such manner as may be determined by the Directors; and any such refunding bonds shall be issued as provided herein for other bonds authorized under this Act, except that the refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In such case, the Comptroller of Public Accounts shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the proceedings authorizing the refunding bonds, and any such exchange may be made in one delivery, or in several installment deliveries.

#### Bonds as Legal and Authorized Investment

Sec. 13. All bonds issued under this Act shall be legal and authorized investments for

all banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees and guardians, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

#### Depository

Sec. 14. Said Hospital Board may select a depository or depositories according to the procedures provided by law for the selection of county and city depositories, or it may enter into a depository contract with any depository or depositories selected by the county or the city, and on the same terms.

#### Exemption of Facilities from Taxation

Sec. 15. Recognizing the fact that all hospital facilities of said Hospital Board will be held for public purposes only, and will be devoted exclusively to the use and benefit of the public, such hospital facilities shall be exempt from taxation of every character.

#### Eminent Domain

Sec. 16. For the purpose of carrying out any power, duty, or function authorized by this Act, said Hospital Board shall have the right to acquire the fee simple title or any other interest in land and any other property by condemnation in the manner provided by Title 52, Revised Civil Statutes of Texas, 1925, as amended, relating to eminent domain. Said Hospital Board shall have the same rights as counties and cities under Article 3268, as amended, of said Title 52. The amount and character of interest in land or other property thus to be acquired shall be determined by the Directors.

#### Investment of Funds

Sec. 17. The law as to the security for, and the investment of, funds of counties and cities shall be applicable to funds of said Hospital Board. The Bond Resolution, or any trust indenture executed in connection therewith, may further restrict the securing and investment of funds of said Hospital Board. Also, said Hospital Board shall have the power to invest all or any part of the proceeds received from the sale and delivery of its bonds, until such proceeds are needed, in direct obligations of the United States of America, to the extent authorized in the Bond Resolution or any trust indenture executed in connection therewith.

## Cumulative Effect; Conflicting Laws

Sec. 18. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control; provided, however, that any Hospital Board shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1965, 59th Leg., p. 1030, ch. 511.]

**Art. 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under \$20,000,000**

Any county in this State having an assessed valuation of property for State and ad valorem tax purposes of less than Twenty Million Dollars (\$20,000,000) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1947, 50th Leg., p. 257, ch. 152, § 1.]

**Art. 4494k. Sale or Lease in Counties with Population of 69,080 to 69,100**

Sec. 1. Any county in this State having a population of not less than sixty-nine thousand and eighty (69,080) and not more than sixty-nine thousand, one hundred (69,100) inhabitants according to the last preceding Federal Census shall have authority to lease or sell any county hospital belonging to said county to be operated as a county hospital by the lessee or purchaser under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee or purchaser; provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is

to the best interest of such county to sell or lease said county hospital. The action of the Commissioners Court in leasing or selling such hospital shall be evidenced by the order of the Commissioners Court showing in full the terms and conditions of the lease or sale of said hospital.

Sec. 2. Provided, however, the sale of such hospital shall not be confirmed by such Commissioners Court unless and until said proposed sale shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county in reference to such subject. The Commissioners Court of such county upon its own motion may order such an election or such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provision of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1949, 51st Leg., p. 141, ch. 85.]

**Art. 4494l. Lease of County Hospital by Any County**

Authority to Lease

Sec. 1. Any county in this State having a county hospital which is operated by said county, may, and such county is hereby authorized to lease such hospital, provided the Commissioners Court of said county shall find and determine by an order entered in the minutes of said Court that it is to the best interest of said county to lease such hospital. The proposed lease of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

Notice and Hearing

Sec. 2. When the Commissioners Court of any such county owning and operating its hospital shall determine and find that it is to the best interest of such county that such hospital be leased, it shall be the duty of the Court to fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform all qualified electors of said county and all other persons who may be interested in the question of the leasing of such county hospital of the time and place of the hearing and of their right to appear at such hearing and contend for or protest the proposed leasing of the county hospital. The county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of

such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

Petition for Referendum; Conduct of Hearing;  
Adjudication

Sec. 3. If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital and shall not finally lease the same unless the proposition to lease such county hospital is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of leasing such hospital. Any person interested may appear before the Court in person or by attorney and contend for or protest the leasing of such county hospital. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital shall be leased. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

Orders When No Petition Submitted

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased. Such Court shall thereupon be fully authorized and empowered to lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum

vote the question as to whether or not the county hospital shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital for a period in excess of five (5) years and shall not finally lease the same for a period in excess of five (5) years unless the proposition to lease such hospital is sustained by a majority of votes cast at said election.

Partial Invalidity

Sec. 5. If any section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Act shall not be affected thereby, it being the intent of the Legislature in adopting, and of the Governor in approving this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

[Acts 1949, 51st Leg., p. 225, ch. 125; Acts 1955, 54th Leg., p. 1041, ch. 395, § 1.]

Art. 4494m. Sale of County Hospital in Counties of 22,000 to 22,800

Sec. 1. Any county in this State having a population of not less than twenty-two thousand (22,000) and not more than twenty-two thousand, eight hundred (22,800) inhabitants, according to the last preceding Federal Census, shall have authority to lease or sell any county hospital belonging to said county to be operated as a county hospital by the lessee or purchaser under such terms and conditions as may be satisfactory to the Commissioners Court and/or county hospital board of said county and the lessee or purchaser; provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interest of such county to sell or lease said county hospital or the county hospital board of such county shall by majority vote lease said hospital. A copy of said lease shall be filed with the Commissioners Court of said county. The action of the Commissioners Court or county hospital board in leasing or selling such hospital shall be evidenced by the order of the Commissioners Court showing in full the terms and conditions of the lease or sale of said hospital.

Sec. 2. Provided, however, the sale of such hospital shall not be confirmed by such Commissioners Court unless and until said proposed sale shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county in reference to such subject. The Commissioners Court of such county upon its own motion may order such an election or such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the elec-

tion provision of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1949, 51st Leg., p. 531, ch. 293.]

**Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County**

**Creation of District**

Sec. 1. Any county having a population of 190,000 or more, and Galveston County, that does not own or operate, or that does own and operate a hospital or hospital system, by itself or jointly with a city, for indigent and needy persons, may be constituted a Hospital District as hereinafter set out, and may take over the hospital or hospital system, either owned separately by a county or jointly with a city, or may provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to the indigent and needy persons residing in said Hospital District; provided, however, that such Hospital District shall not be created unless and until an election is duly held in said county for such purpose, which said election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time said election is ordered by the Commissioners Court. At said election there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a Hospital District shall be created in the county; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

“FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢), on the One Hundred Dollars (\$100.00) valuation”; and

“AGAINST the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on One Hundred Dollars (\$100.00) valuation”;

If such county or city, either or both of them, has any outstanding bonds theretofore issued for hospital purposes (which by the provisions of Section 4 of this Act are required to be assumed by the Hospital District), then the ballots for such election shall, instead of the foregoing, have printed thereon:

“FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes”; and

“AGAINST the creation of a Hospital District; providing for the levy of a tax

not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes.”

**Taxes of District; Deposit of Taxes and Other Income**

Sec. 2. The Commissioners Court of any county which has voted to create a Hospital District shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District at the same time taxes are levied for county purposes, using the county values and the county tax roll, a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of all taxable property within the Hospital District, for the purpose of

(1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the Hospital District for hospital purposes, as herein provided;

(2) providing for the operation and maintenance of the hospital or hospital system; and

(3) when requested by the Board of Hospital Managers and approved by the Commissioners Court, for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

The tax so levied shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county on the county tax values, and in the same manner and under the same conditions as county taxes. The Assessor and Collector of Taxes shall charge and deduct from payments to the Hospital District the fees for assessing and collecting the tax at the rate of not exceeding one and one-half (1½%) per cent of the amounts collected as may be determined by the Commissioners Court. Such fees shall be deposited in the county's general fund, and shall be reported as fees of office of the Tax Assessor and Collector. Interest and penalties on taxes paid to the Hospital District shall be the same as in the case of county taxes. Discounts shall be the same as for county taxes. The residue of tax collections, after deduction of discounts and fees for assessing and collecting, shall be deposited in the district depository; and such funds shall be withdrawn only as provided herein. All other income of the Hospital District shall be deposited in like manner with the district depository. Warrants against Hospital District funds shall not require the signature of the County Clerk.

The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the said Hospital District is established, for the purpose of securing funds to



initiate the operation of the Hospital District, and to pay assumed bonds.

Hospital Districts in Counties of 450,000 or More; Assessment and Collection of Taxes; Rate; Fees; Election and Ballots

Sec. 2a. Hospital Districts created under this Act, in counties which contain a population of 450,000 or more, according to the last preceding Federal Census, shall have the taxes of said Hospital Districts assessed and collected by the Assessor and Collector of Taxes in the manner provided for in Section 2, except as in this Section 2a, provided. The property assessed for said Hospital Districts, upon the order of the Commissioners Court of the county, shall be assessed at such percentage of its fair cash market value as the Commissioners Court orders, which may be a greater percentage than that used in assessing the property for state and county purposes.

Further, the Assessor and Collector of Taxes of said counties shall charge and deduct from payments to the Hospital District the fees for assessing and collecting the tax at the rate of not exceeding one and one-half (1½) per cent of the amounts assessed as approved by the Board of Equalization and one and one-half (1½) per cent of the amounts collected, as may be determined by the Commissioners Court.

Provided, however, that the property within said Hospital District shall not be assessed at a greater percentage of its fair cash market value than the percentage at which it is assessed for county and state purposes, nor shall the Assessor and Collector of Taxes of such county charge a fee for assessing and collecting the tax at a rate different from that authorized in Section 2 unless and until an election is duly held in said Hospital District for the purpose of approving such procedure. Said election may be initiated by the Commissioners Court upon its own motion or upon petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time said election is ordered by the Commissioners Court. At said election there shall be submitted to the qualified property taxpaying voters the proposition of whether the property within said Hospital District, upon the order of the Commissioners Court to the Assessor and Collector of Taxes of the county, shall be assessed at a greater percentage of its fair cash market value than that percentage assessed for county and state purposes, as may be determined by the Commissioners Court, and a majority of the qualified property taxpaying voters participating in said election shall determine the result of the election. The ballots shall have printed thereon:

FOR authorizing the County Assessor and Collector of Taxes, upon the order of the Commissioners Court, to assess the property within the Hospital District at a greater percentage of its fair cash market value than that assessed for state and county purposes.

AGAINST authorizing the County Assessor and Collector of Taxes, upon the order of the Commissioners Court, to assess the property within the Hospital District at a greater percentage of its fair cash market value than that assessed for state and county purposes.

Hospital Districts in Counties of 650,000 or More; Assessment of Taxes; Rate

Sec. 2b. In Hospital Districts created under this Act located in counties containing a population of 650,000 or more according to the last preceding Federal Census and having teaching hospital facilities that are affiliated with a state-supported medical school, the Commissioners Court, on its own motion or on the approval of the qualified property taxpaying electors at an election held pursuant to the provisions of Section 2a of this Act, may order the Assessor and Collector of Taxes to assess the property in the Hospital District at a greater percentage of its fair cash market value than that used in assessing the property for state and county purposes, but in no instance shall that amount exceed fifty (50) per cent of fair cash market value. Such order to the assessor and collector of taxes spread upon the minutes of Commissioners Court shall constitute notice for all purposes to the taxpayers of said Hospital District of the intention to increase assessments.

Bonds of District; Taxes to Pay Bonds and Interest; Sinking Fund

Sec. 3. The Commissioners Court shall have the power and authority to issue and sell as the obligations of such Hospital District, and in the name and upon the faith and credit of such Hospital District, bonds for the acquisition, purchase, construction, equipment and enlargement of the hospital or hospital system, and for any or all of such purposes; provided, that a sufficient tax shall be levied to create an interest and sinking fund to pay the interest and principal as same matures provided said tax together with any other taxes levied for said District shall not exceed Seventy-five Cents (75¢) in any one year. Such bonds shall be executed in the name of the Hospital District and on its behalf by the County Judge of the county within which the Hospital District is created, and countersigned by the County Clerk, and shall be subject to the same requirements in the matter of approval thereof by the Attorney General of the State of Texas and the registration thereof by the Comptroller of Public Accounts of the State of Texas as are by law provided for such approval and registration of bonds of such county; and the approval of such bonds by the Attorney General shall have the same force and effect as is by law given to his approval of bonds of such county. No bonds shall be issued by such hospital district (except refunding bonds) until authorized by a majority vote of the legally qualified property taxpaying voters, residing in such Hospital District, voting at an election called

and held in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of the State of Texas (1925), as amended, relating to county bonds. Such election may be called by the Commissioners Court of its own motion, or shall be called by it after request therefor by the Board of Hospital Managers; and the same persons shall be responsible for the conduct of such election and the arrangement of all details thereof as the persons charged therewith in connection with other county-wide elections. The cost of any such election shall be a charge upon the Hospital District and its funds; and the Hospital District shall make provision for the payment thereof before the Commissioners Court shall be required to order such an election.

In the manner hereinabove provided, the bonds of such Hospital District may, without the necessity of any election therefor, be issued for the purpose of refunding and paying off any bonded indebtedness theretofore assumed by such Hospital District and any bonds theretofore issued by such Hospital District; such refunding bonds may be sold and the proceeds thereof applied to the payment of any such outstanding bonds or may be exchanged in whole or in part for not less than a like amount of said outstanding bonds and interest matured thereon, but unpaid; provided the average interest cost per annum on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, shall not exceed the average interest cost per annum so computed upon the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of such proceeds. In the foregoing computations, any premium or premiums required to be paid upon the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the Hospital District of the refunding bonds.

If the city and the county, or either of them, has voted bonds to provide hospital facilities, but such bonds have not been sold at the date of the creation of the Hospital District, the authority for such bonds shall be canceled, and they shall not be sold.

County or City Property or Funds; Transfer to District

Sec. 4. Any lands, buildings or equipment that may be jointly or separately owned by such county and city, and by which medical services or hospital care, including geriatric care, are furnished to the indigent or needy persons of the city and county, shall become the property of the Hospital District; and title thereto shall vest in the Hospital District; provided, however, that whenever any of such property is deemed by the Board of Managers of the Hospital District to be of no further use, presently or in the future, for the purposes for which it was transferred to the Hospital Dis-

trict, the Board of Managers of the Hospital District may, by deed transfer such property, upon any terms deemed suitable by the Board of Managers and the Commissioners Court, back to the city or county from which such property was transferred to the Hospital District upon creation of the Hospital District; and any funds of the city and county, or either, which are the proceeds of any bonds assumed by the Hospital District, as hereby provided, shall become the funds of the Hospital District; and title thereto shall vest in the Hospital District; and there shall vest in the Hospital District and become the funds of the Hospital District the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the city or the county, or either of them, for the support and maintenance of the hospital facilities for the year within which the Hospital District comes into existence, thereby providing such Hospital District with funds with which to maintain and operate such facilities for the remainder of such year. All obligations under contract legally incurred by the city or county, or either of them, for the building of, or the support and maintenance of, hospital facilities, prior to the creation of the said District but outstanding at the time of the creation of the District, shall be assumed and discharged by it without prejudice to the rights of third parties, provided that the management and control of the property and affairs of the present hospital system shall continue in the Board of Managers of such system until appointment and organization of the Board of Managers of the Hospital District, at which time the Board of Managers of the present hospital system shall turn over all records, property and affairs of said hospital system to the Board of Managers of the Hospital District and shall cease to exist as a hospital system Board of Managers.

Any outstanding bonded indebtedness incurred by the city or county, either or both of them, in the acquisition of such lands, buildings and equipment, or in the construction and equipping of such hospital facilities, together with any other outstanding bonds issued by either of them for hospital purposes, and the proceeds of which are in whole or in part still unspent, shall be assumed by the Hospital District and become the obligation of the Hospital District; and the city or county, either or both of them, that issued such bonds, shall be by the Hospital District relieved of any further liability for the payment thereof, or for providing interest and sinking fund requirements thereon; provided that nothing herein contained shall limit or affect any of the rights of any of the holders of such bonds against the city or the county, as the case may be, in the event of default in the payment of the principal or interest on any of such bonds in accordance with their respective terms.

The Commissioners Court and the city, where a hospital or hospital system is jointly operated, or the Commissioners Court, where the county owns the hospital or hospital system, as

the case may be, as soon as the Hospital District is created and authorized at the election hereinabove provided, and there have been appointed and qualified the Board of Hospital Managers hereinafter provided for, shall execute and deliver to the Hospital District, to wit: to its said Board of Hospital Managers, an instrument in writing conveying to said Hospital District the hospital property, including lands, buildings and equipment; and shall transfer to said Hospital District the funds hereinabove provided to become vested in the Hospital District, upon being furnished the certificate of the Chairman of the Board to the fact that a depository for the District's funds has been selected and has qualified; which funds shall, in the hands of the Hospital District and of its Board of Hospital Managers, be used for all or any of the same purposes as, and for no other purposes than, the purposes for which the county or the city transferring such funds could lawfully have used the same had they remained the property and funds of such county or city.

#### Board of Hospital Managers

Sec. 5. The Commissioners Court shall appoint a Board of Hospital Managers, consisting of not less than five (5) nor more than seven (7) members, who shall serve for a term of two (2) years, with overlapping terms if desired, and with initial appointments to terms of office arranged accordingly, without pay, and whose duties shall be to manage, control and administer the hospital or hospital system of the Hospital District. The Board of Managers shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the hospital or hospital system.

The Board shall appoint a general manager, to be known as the Administrator of the Hospital District. The Administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the Board. The Administrator shall be subject to removal at any time by the Board. The Administrator shall, before entering into the discharge of his duties, execute a bond payable to the District, in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the Board may require. The administrator shall perform all duties which may be required of him by the Board, and shall supervise all of the work and activities of the District, and have general direction of the affairs of the District, within such limitations as may be prescribed by the Board. He shall be a person qualified by training and experience for the position of Administrator.

The Board of Managers shall have the authority to appoint to the staff such doctors and to employ such technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation

of the hospital or hospital system; provided that no contract or term of employment shall exceed the period of two (2) years.

The Board of Managers, with the approval of the Commissioners Court shall be authorized to contract with any county for care and treatment of such county's sick, diseased and injured persons, and with the State and agencies of the Federal Government for the care and treatment of such persons for whom the State and such agencies of the Federal Government are responsible. Further, under the same conditions, the Board of Managers may enter into such contracts with the State and Federal Government as may be necessary to establish or continue a retirement program for the benefit of its employees.

If care or treatment is given to a resident of a county outside the Hospital District which has not contracted with the Board of Managers for such services, and said non-resident is wholly without financial means except such as are derived from charity, that County shall, upon presentation of a certified statement that care or treatment was necessary for the preservation of human life and was actually performed, be obligated to reimburse the Hospital District in an amount not to exceed the actual cost of the service rendered.

A majority of the Board of Hospital Managers shall constitute a quorum for the transaction of any business. From among its members, the Board shall choose a Chairman, who shall preside; or in his absence a Chairman pro tempore shall preside; and the Administrator or any member of the Board may be appointed Secretary. The Board shall require the Secretary to keep suitable records of all proceedings of each meeting of the Board. Such record shall be read and signed after each meeting by the Chairman or the member presiding, and attested by the Secretary. The Board shall have a seal, on which shall be engraved the name of the Hospital District; and said seal shall be kept by the Secretary and used in authentication of all acts of the Board.

#### Retirement System

Sec. 5a. The Board of Managers may in addition to retirement programs authorized by this Act establish such other retirement program for the benefit of its employees as it deems necessary and advisable.

#### Cumulative Powers

Sec. 5b. The Board of Managers, with the approval of the Commissioners Court, shall have the power:

(a) To construct, condemn and purchase, purchase and acquire, lease, add to, maintain, operate, develop and regulate, sell, exchange and convey any and all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities and services the hospital district may re-

quire or may have available to sell, lease or exchange;

(b) To further effectuate such powers, the Board of Managers, with the approval of the Commissioners Court, may cooperate and contract with the United States government, the State of Texas, any municipality or other hospital district, or any department of those governing bodies, or with any privately owned or operated hospital, corporate or otherwise, which privately owned or operated hospital is situated in the hospital district; provided, in the opinion of the Board of Managers and of the Commissioners Court, such a contract is deemed expedient and advantageous to the hospital district under existing circumstances, and be for such fair and reasonable compensation and on such other terms and for such length of time as may be deemed to further and assist the hospital district in performing its duty to provide medical and hospital care to needy inhabitants of the county.

(c) This amendment to Chapter 266, Acts of the 53rd Legislature, Regular Session, as amended (Article 4494-n, Vernon's Annotated Civil Statutes as amended), shall be considered and construed as more specifically expressing certain existing powers and cumulatively granting certain other powers to hospital districts created or which may be created under such Act.

**Powers of Commissioners Court; Duties of District, County Officers, Employees or Agents**

Sec. 6. The Commissioners Court of any such county shall have the power to prescribe the method and manner of making purchases and expenditures by and for such Hospital District, and also shall be authorized to prescribe all accounting and control procedures, or may delegate any or all such powers to the Board of Managers of such District by the adoption of an appropriate resolution or order to that effect. The Hospital District shall pay all salaries and expenses necessarily incurred by the county or any of its officers and agents in performing any duties which may be prescribed or required under this section. It shall be the duty of any officer, employee or agent of such county to perform and carry out any function or service prescribed by the Commissioners Court hereunder.

**Assistant to Administrator**

Sec. 7. In the event of incapacity, absence or inability of the Administrator to discharge any of the duties required of him, the Board may designate an assistant to the Administrator to discharge any duties or functions required of the Administrator. Such assistant or other persons shall give such bond and have such limitations upon his authority as may be fixed by the order of the Board.

**Reports of Administrator; Budget**

Sec. 8. Once each year, as soon as practicable after the close of the fiscal year, the Ad-

ministrator of the Hospital District shall report to the Board of Managers, the Commissioners Court, the State Board of Health and the State Comptroller a full sworn statement of all moneys and choses in action received by such Administrator and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the District for the term. Under the direction of the Board of Managers, he shall prepare an annual budget which shall be approved by the Board of Managers and shall then be presented to the Commissioners Court for final approval. In like manner all budget revisions shall be subject to approval by the Commissioners Court.

**Eminent Domain**

Sec. 9. A Hospital District organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the said District, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided that the said District shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph Numbered 2 in Article 3268, V. C.S., 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said District, the District shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Civil Appeals, or to the Supreme Court.

**Depository for District; Selection**

Sec. 10. Within thirty (30) days after the appointment of the Board of Hospital Managers of any District created under this Act, the said Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter, until its successor is selected and qualified. In the alternative, the Board may elect to use the depository theretofore selected by the county. The Board may extend any contract with a depository to the next month of October, and select a depository for a period of two (2) years thereafter.

**Inspection of Districts**

Sec. 11. All Hospital Districts established or maintained under provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any State Board of Charities (or

Public Welfare) that may hereafter be created, and of the Commissioners Court of the county, and resident officers shall admit such representatives into all Hospital District facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the Hospital District.

Legal Representatives of District

Sec. 12. It shall be the duty of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, charged with the duty of representing the county in civil matters, to represent the Hospital District in all legal matters; provided, however, that the Board of Hospital Managers shall be authorized at its discretion to employ additional legal counsel when the Board deems advisable.

The Hospital District shall contribute sufficient funds to the general fund of the county for the account of the budget of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, to pay all additional salaries and expenses incurred by such officer in performing the duties required of him by such District.

Medical and Hospital Care Assumed by District; Delinquent Taxes Owed to Cities and Counties

Sec. 13. No county that has been constituted a Hospital District, and no city therein, shall thereafter levy any tax for hospital purposes; and such Hospital District shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in said Hospital District from the date that taxes are collected for the Hospital District.

That portion of delinquent taxes owed cities and counties on levies for present city and county hospital systems under Acts 48th Legislature, 1943, Chapter 383, page 691,<sup>1</sup> shall continue to be paid to the Hospital District by the city and county as collected, and applied by the Hospital District to the purposes for which such taxes originally were levied.

<sup>1</sup> Article 4494i.

Patients; Inquiry as to Ability to Pay; Liability of Relatives

Sec. 14. Whenever a patient has been admitted to the facilities of the Hospital District from the county in which the District is situated, the Administrator shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives, to pay to the treasurer of the Hospital District for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The Administrator shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the

manner provided by law for the collection of expenses of the last illness of a deceased person. If the Administrator finds that such patient or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the Hospital District. Should there be a dispute as to the ability to pay, or doubt in the mind of the Administrator, the County Court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which appeal shall lie to the District Court by either party to the dispute.

This Act shall apply to Hospital Districts created before the passage hereof, as well as to any such Districts hereafter created, and any such District created by election prior to the effective date of this Act is hereby validated, confirmed and ratified.

Donations, Gifts and Endowments for District

Sec. 15. Said Board of Managers of the Hospital District is authorized on behalf of said Hospital District to accept donations, gifts, and endowments for the Hospital District, to be held in trust and administered by the Board of Managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor, not inconsistent with proper management and objects of Hospital District.

[Acts 1953, 53rd Leg., p. 691, ch. 266; Acts 1955, 54th Leg., p. 715, ch. 257, § 1; Acts 1959, 56th Leg., p. 587, ch. 271, § 1; Acts 1963, 58th Leg., p. 496, ch. 181, § 1; Acts 1965, 59th Leg., p. 494, ch. 255, § 1; Acts 1967, 60th Leg., p. 34, ch. 15, § 1, eff. March 13, 1967; Acts 1967, 60th Leg., p. 1087, ch. 477, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1902, ch. 568, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 713, ch. 306, § 1, eff. Aug. 27, 1973.]

Acts 1967, 60th Leg., p. 34, ch. 15, § 2, repealed conflicting laws to the extent of conflict and contained a savings clause.

Section 2 of the 1971 amendatory act repealed conflicting laws and contained a severability provision.

Art. 4494n-1. Validating Organization and Creation of County-wide Hospital Districts in Counties of 190,000 or More and Galveston County

Sec. 1. The organization and creation of all county-wide hospital districts created or sought to be created by authority of Chapter 266, Acts of the Fifty-third Legislature of 1953 as amended by Chapter 257, Acts of the Fifty-fourth Legislature of 1955 (being Article 4494n, Vernon's Civil Statutes of Texas) and heretofore established or attempted to be established by the Commissioners Court of any county of the State of Texas are hereby ratified, validated and confirmed in all respects to the same extent and to like effect as if duly and legally established in the first instance. All acts of the Commissioners Courts of the counties of such districts in ordering an election or elections submitting to a vote of the qualified property taxpaying voters of the counties the following statutory proposition:

"The creation of a hospital district; providing for the levy of a tax not to exceed seventy-

five cents (75¢) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any City in said County for hospital purposes" are hereby ratified, validated and confirmed. Such election or elections and all acts of the Commissioners Courts in such counties in declaring the results thereof are hereby ratified, validated and confirmed. The fact that by inadvertence or oversight any act was omitted by the Commissioners Court or any official of any such county in ordering an election or elections or in giving sufficient statutory notice thereof or in declaring the results thereof, shall in nowise invalidate any of such proceedings or the creation of the hospital district sought to be created by such proceedings.

Sec. 2. This Act shall apply only to hospital districts created or sought to be created within counties eligible under the provisions of Article IX, Section 4 of the Texas Constitution and the aforementioned Article 4494n, Vernon's Civil Statutes of Texas, and in which an election has been held on the voting proposition specified in Section 1 hereof which resulted in the adoption of said proposition by a majority of the vote of the qualified property tax-paying voters in the county participating in said election.

Sec. 3. This Act shall not apply to any hospital district which is now involved in litigation in any district court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, at the effective date of this Act, in which litigation the validity of the organization or creation of such hospital district is attacked, if such litigation is ultimately determined against the validity of the organization or creation of the hospital district.

[Acts 1959, 56th Leg., p. 10, ch. 5.]

#### Art. 4494n-2. Sale and Lease Back of Land, Buildings, Equipment, etc. for Hospital District Purposes

Sec. 1. The commissioners court of every county wherein a Hospital District exists created by Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953, as amended,<sup>1</sup> is hereby authorized to sell land, buildings, facilities, or equipment or personal property for the purpose of entering into contracts, to lease or to construct, repair, renovate, improve, or enlarge or to rent buildings, land, facilities, equipment, or services from others for any hospital district purposes and to pay the regular monthly utility bills for such land, buildings, facilities, equipment or services so contracted, leased, or rented, such as electricity, gas, and water; and when in the opinion of a majority of the commissioners court of a county such facilities, equipment, and services are essential to the proper administration of such agencies of the county, said court is hereby specifically authorized to pay for same and for the regular monthly utility bills for such offices out of the county's general fund by warrant as in the payment of other obligations of the county.

Sec. 2. Provided that all construction projects originated or initiated under the terms of this Act, shall be let by contract, which contract shall contain the prevailing wage for all mechanics, laborers, and persons employed in the construction of such project. The commissioners court of Tarrant County shall determine and set the prevailing wage which shall be the same prevailing wage set by the commissioners court of Tarrant County on all construction projects involving the expenditure of county funds.

Sec. 3. All actions, proceedings, orders, and contracts for such sale, rental, lease, or utility bills for such purposes as stated in Section 1 hereof, made and entered into by any commissioners courts of this state, pursuant to which such service has been rendered, are hereby validated, confirmed, and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 4. Provided further, that upon or prior to the expiration of the number of terms of years as set forth in any such contract, and when in the opinion of a majority of the commissioners court of such county the stated price is a reasonable price within the judgment of a majority of said court, such facilities may be purchased and become the property of said county and be paid for out of the general fund.

[Acts 1969, 61st Leg., 2nd C.S., p. 67, ch. 15, eff. Sept. 19, 1969.]

<sup>1</sup> Article 4494n.

Section 5 of the 1969 Act was a severability provision.

#### Art. 4494o. Public Hospital Districts; Counties of 75,000 or Less

##### Establishing of Districts; Powers of Districts

Sec. 1. The Commissioners Courts may establish one or more Public Hospital Districts in their respective counties in the manner provided by this Act, which said districts shall be empowered to own and operate hospitals and to supply hospital services for the residents of such districts and other persons. Such districts may or may not include villages, towns, and municipal corporations, or any portion thereof, but no land shall at the same time be included in more than one Public Hospital District created hereunder. It is provided, however, that no such district shall be formed unless the assessed valuation of all property in such district shall exceed Twenty-five Million Dollars (\$25,000,000.00), within a county having an assessed valuation of not less than Two Hundred Million Dollars (\$200,000,000.00), nor shall any such district be created in counties having in excess of 75,000 population according to the then next preceding federal census.

##### Petition for Election; Tax Levy; Bond Issue

Sec. 2. When it is proposed to establish a Public Hospital District as above provided, a petition praying for an election therefor, signed by not less than five per cent (5%) of the qualified taxpaying voters of the proposed territory, shall be presented to the Commission-

ers Court of the county in which the proposed district is situated, stating the boundaries of the proposed district, the public necessity therefor, and designating a name for such district, which shall include the name of the county. Said petition may also incorporate therein a request for the Commissioners Court, in the event an election is ordered for the creation of such district, to submit at the same election the question of levying a tax for the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, in the event same is created, and/or the bonds to be issued for the construction and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection.

**Cash Deposit with Petition; Disposition**

Sec. 3. Said petition shall be accompanied by Two Hundred Dollars (\$200.00) in cash, which shall be deposited with the clerk of said court, and by him held until after the results of the election for the creation of the district and issuance of bonds is officially made known. If said election is in favor of the establishment of said district, then the clerk shall return said deposit to the petitioners, their agent or attorney. If said election is against the establishment of such district, then the clerk shall pay out of said deposit upon vouchers approved and signed by the County Judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance shall be returned to the petitioners, their agent or attorney.

**Hearing on Petition; Time for Hearing; Notice**

Sec. 4. At the same session when said petition is presented, the court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty (30) days nor more than sixty (60) days from the presentation of the said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and other order of the court thereon for twenty (20) days prior to the election in five public places in said county, one at the courthouse door, and four within the limits of the district.

**Order for Election; Prerequisites; Questions Submitted**

Sec. 5. If at the hearing, the court finds that such petition has been signed by the requisite number of qualified taxpaying voters, correctly describes the boundaries of the proposed district, and otherwise conforms to the provisions of this Act, then the court shall so find and shall enter an order for an election to be held in the proposed district within a time not less than twenty (20) days and not more than thirty (30) days after such order is issued, to determine whether or not such Public Hospital District shall be created and formed; and in the event the petition for the creation of such Public Hospital District was accompanied by a

request to submit the question of levying of a tax for the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, in the event same is created and/or bonds to be issued for the construction and/or equipment of hospital buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection, then such order shall also submit such question of levying a tax and/or issuing bonds according to the terms of said petition. Such order shall contain a description of the metes and bounds of such Public Hospital District to be formed, and shall fix the date of such election. A majority vote of the qualified taxpaying voters in said district voting in said election shall determine the question or questions submitted in said order.

**Canvass of Election Returns; Declaration and Entry of Results**

Sec. 6. Said Commissioners Court shall within ten (10) days after holding such election make a canvass of the returns and declare the results of the election. The court shall then enter an order in the minutes as to the results.

**Board of District Hospital Trustees; Election; Powers and Duties**

Sec. 7. Such Public Hospital District shall be governed, administered and controlled by and under the direction of a Board of five Public District Hospital Trustees elected at large from the Public Hospital District by the qualified voters of said district, it being provided that whenever an election is ordered for the creation of such district at the same election at which shall be determined the creation of such district, there shall also be submitted and voted upon the question of who shall be the Public District Hospital Trustees, in the event such district is created. The five candidates for Public District Hospital Trustees receiving the highest number of votes at such election shall be declared the Trustees of such Public District Hospital. Such Trustees so elected, when duly qualified hereunder, shall be the legal and rightful Public District Hospital Trustees for such district within the full meaning and purpose of this law. Such Trustees shall hold office until the next regular election for state and county officers and shall then and thereafter be elected every two years at each general election. Any candidate desiring to be voted upon as such first Trustee shall present a petition to the Commissioners Court not later than three days before the order authorizing the election is issued by the court, and shall be accompanied by a petition of not less than one hundred (100) of the qualified voters in such district, requesting that his name be placed on the ticket as a candidate for such Trustee. Said Board of Trustees shall adopt such rules, regulations, and bylaws as they may deem proper, and they shall have exclusive power to manage and govern said Public District Hospi-

tal and as such they shall constitute a body corporate by the name of "\_\_\_\_\_ County Public Hospital District No. \_\_\_\_\_" and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands and may perform other acts for the promotion of health in said district.

#### Oath of Trustees

Sec. 8. Before entering upon his duties, each Trustee shall take and subscribe before the County Judge an oath faithfully to discharge the duties of his office without favor or partiality, and to render a true account of his activities to the court whenever requested to do so. Such oath shall be filed by the clerk of the court and preserved as a part of the district records.

#### Bond of Trustees

Sec. 9. Each Trustee shall give a good and sufficient bond for Five Thousand Dollars (\$5,000.00) payable to the County Judge for the use and benefit of the district, conditioned upon the faithful performance of his duties.

#### Compensation of Trustees; Expenses; Organization; Quorum; Seal

Sec. 10. The Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder. The Trustees shall organize by electing one of their number chairman and one secretary, and such other officers as they may deem fit. Three Trustees shall constitute a quorum which shall be sufficient in all matters pertaining to the business of said district. All proceedings of the Board of Trustees shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. The Board of Trustees shall adopt an official seal.

#### Superintendent and Other Officers

Sec. 11. The Board of Trustees of such Public Hospital District shall appoint a superintendent and such other officers as they may deem necessary and fix the salary or other compensation to be received by each of them. All such appointments shall be for an indefinite time and may be removable at the will of the Board of Trustees. The superintendent shall be the chief administrative officer of the Public District Hospital and shall have control of administrative functions of said hospital. He shall be responsible to the Board of Trustees for the efficient administration of all affairs of the hospital. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the Board of Trustees. The superintendent shall be entitled to attend all meetings of the Board of Trustees and its committees and to take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote. Such Public Hospital District superin-

tendent shall have power, and it shall be his duty:

1. To carry out the orders of the Board of Trustees, and to see that all the laws of the state pertaining to matters within the functions of his department are duly enforced;

2. To keep the Board of Trustees fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of his department, and to recommend to the Board of Trustees what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the Board of Trustees all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the Board of Trustees salaries of the employees of his office and a scale of salaries or wages to be paid for the different classes of service required by the district.

#### Additional Bond Issue; Election

Sec. 12. If the proceeds of the original bond issue shall be insufficient to complete the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, or if the Trustees determine to provide for additional construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of same, the rate of interest of said bonds and the time for which they are to run. Said court shall thereupon order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the latest annual assessment thereof made for state and county taxation.

#### Changes in Proposed District; Procedure; Notice

Sec. 13. After the issuance of bonds is authorized the Trustees may make changes in said proposed Public District Hospital, additions, or betterments thereto, extensions thereof, or equipment therefor, which will be of advantage to the Public District Hospital, which changes will not increase the cost of such proposed project beyond the amount of bonds authorized. Such changes may be made by the Trustees by entering on the minutes a notation of such changes. Notice of such change or changes shall be given by publication of such notation with the book and page number of the minutes for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such district is situated.



**Record Book for Bonds; Inspection; Recording Fees**

Sec. 14. Before issuing any bonds hereunder, the court shall provide a well-bound book, in which a record shall be kept by the County Clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate of assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment, and upon the payment of any bond an entry thereof shall be made in said book. Said book shall at all times be open to inspection of all parties interested in said district either as taxpayers or bondholders. The County Clerk shall receive for his service in recording all bonds and other instruments of the district the same fees as provided by law for other like records.

**Bonds; Issuance; Procedure; Denominations; Interest Rate; Majority**

Sec. 15. All bonds issued hereunder shall be issued in the name of the district, signed by the County Judge and attested by the County Clerk, with the seal of the court affixed thereto. Such bonds shall be issued in denominations of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) each, and shall bear interest at not exceeding six per cent (6%) per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place, manner and conditions of their payment, and the rate of interest thereon, as may be determined and ordered by the court. No bonds shall be made payable more than thirty (30) years after the date thereof.

**Attorney General; Certification of Validity of Bonds**

Sec. 16. Before any bonds are offered for sale, the district shall forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the court levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of such district as such, including the series of bonds proposed, and the assessed value of property for the purpose of taxation as shown by the latest official assessment of the county, with such other information as the Attorney General may require. Such officer shall carefully examine said bonds, and if he shall find that they are issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such district, he shall so officially certify.

**Registration of Bonds by Comptroller; Prima Facie Evidence; Defenses Against Validity**

Sec. 17. When said bonds have been so approved, they shall be registered by the Comptroller in a book to be kept for that purpose, and the certificate of their approval shall be preserved of record for use in the event of litigation. Thereafter, said bonds shall be held prima facie valid and binding obligations in every action, suit or proceeding in which their validity is brought in question. In every suit

to enforce the collection of said bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence as prima facie proof of the validity of such bonds, together with the coupons attached thereto. The only defense that can be offered against the validity of such bonds shall be forgery or fraud.

**Bond of County Judge; Payment of Premium**

Sec. 18. After the Public Hospital District bonds have been registered, the County Judge shall at once execute a good and sufficient bond, payable to the Trustees and approved by them, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. If said bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on said bond, which shall be paid out of the construction and maintenance fund upon presentation of the bill therefor to the Trustees. If there is any controversy as to the reasonableness of the amount claimed as such premium, such controversy may be determined by any court of competent jurisdiction. Said premium may be deducted by the Board of Trustees from the commission allowed the County Judge on the sale of bonds by him.

**Sale of Bonds; Disposition of Proceeds; District Funds**

Sec. 19. When the bonds have been registered, the County Judge shall, under the direction of the Commissioners Court, advertise and sell such bonds on the best terms and for the best price possible, not less than the par value and accrued interest. All money received from such sale shall be turned over as received by the County Judge to the County Treasurer and shall be by him placed to the credit of the district in the construction and maintenance fund thereof. The County Treasurer of the county in which such district is situated shall be the treasurer of the district, and all funds in the district shall be paid to him as such treasurer and shall be disbursed by him only by warrants drawn and signed by the chairman of the Board of Trustees, or such other officer of the district as may be selected and designated by the Board of Trustees. The County Treasurer shall maintain in the name of the Public Hospital District such funds as may be created by the Board of Trustees, and into which shall be placed such moneys as the Board of Trustees may by its resolution direct. All such Public Hospital District funds shall be deposited with the county depositories under the same resolutions, contracts and securities as are provided by statute for county depositories, and all interest collected on such hospital funds shall belong to such Public Hospital District.

**Tax Levy to Pay Bonds and Interest; Sinking Fund**

Sec. 20. When bonds have been voted, the court shall annually levy and cause to be assessed and collected taxes upon all property within the district, whether real, personal, or otherwise, and sufficient in amount to pay the interest on such bonds as it falls due, and to

redeem such bonds at maturity. Such taxes when so collected shall be placed in the interest and sinking fund.

**Annual Report by Trustees**

Sec. 21. The Trustees shall annually, on or before the first day of June, prepare and file with the court a full detailed report of the condition of the Public District Hospital with an estimate of the probable cost of maintenance, operation, and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and accounts belonging to such district and a list of all lawful demands, debts, and obligations against the district. Such report shall be verified by the Trustees and carefully investigated and considered by the court before any levy of taxes is made under the succeeding section.

**Assessment and Collection of Taxes; Maximum Rate; Disposition**

Sec. 22. Following the investigation and consideration of said above report, the Commissioners Court shall cause to be assessed and collected taxes upon all property in the district, whether real, personal, or otherwise, sufficient to maintain, keep in repair, to preserve and operate the Public District Hospital, and to pay all legal, just, and lawful debts, damages, and obligations against such district. Such levy shall never, in any one year, exceed two-tenths of one per cent ( $\frac{2}{10}$  of 1%) of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund.

**Sale of Bonds Not Required for Purpose for Which Voted**

Sec. 23. If any bonds remain which are not required for the purpose for which they were voted, then with the consent of the Commissioners Court duly made of public record, such bonds or a part thereof may be sold and the proceeds of the sale thereof may be placed in the construction and maintenance fund and used for the purpose stated in the section next preceding.

**County Tax Assessor; Powers and Duties; Board of Equalization**

Sec. 24. In the assessment and collection of the taxes authorized hereunder, and in all matters pertaining thereto or connected therewith, the County Tax Assessor and Collector shall have the same powers and shall be governed by the same rules, regulations, and proceedings as provided for the assessment and collection of state and county taxes, unless otherwise herein provided. The Commissioners Court shall constitute a board of equalization for such district, and all laws governing boards of equalization for state and county taxing purposes shall govern such district board.

**Lien and Due Date of Taxes; Penalty for Non-payment**

Sec. 25. The taxes authorized hereunder shall be a lien upon all property assessed therefor. The Commissioners Court shall, and

it is empowered to, fix the time and determine the date when such taxes shall become due and payable; otherwise they shall become due and payable at the same time as state and county taxes. Upon the failure to pay such taxes when due, the penalty provided by law for failure to pay state and county taxes at maturity shall in every respect apply to taxes hereunder.

**Additional Books Provided; Assessments; Compensation of Assessor; Removal from Office**

Sec. 26. The Commissioners Court shall provide all necessary additional books for the use of the Assessor and Collector and the County Clerk of such district, and charge the cost of same to the district. When ordered by the Commissioners Court, the Assessor shall assess all property within the district and list the same for taxation in the books or rolls furnished him by said Commissioners Court for said purpose, and return said books or rolls when he returns the state and county rolls for correction and approval. If said court finds them correct, it shall approve the same and direct the County Clerk to issue a warrant against the County Treasurer in favor of the Assessor to be paid from the district funds. The Assessor shall receive for said services such pay as the Commissioners Court deems proper. If the Assessor fails or refuses to comply with such order, he shall be suspended from the further discharge of his duties by the Commissioners Court, and removed from office in the mode prescribed by law for the removal of county officers.

**Duties of County Tax Collector; Additional Bond**

Sec. 27. The County Tax Collector shall be charged by the Commissioners Court with the assessment rolls of the district, and shall be allowed such compensation for the collection of said taxes as is allowed for the collection of other taxes. The Commissioners Court shall require said officer to give an additional bond or security in such sum as they deem proper and safe to secure the collection of said taxes. If such officer fails or refuses to give such additional security when requested by the court, within the time provided by law for such purposes, he shall be suspended from office by the Commissioners Court and immediately thereafter be removed from office in the mode prescribed by law.

**Certified List of Tax Delinquent Property; Tax Sale**

Sec. 28. The collector shall make a certified list of all delinquent property upon which the Public District Hospital tax has not been paid, and return same to the Commissioners Court, which shall proceed to have the same collected by the sale of such property in the same manner provided by law for the sale of property for the collection of state and county taxes. The Trustees may purchase any property so sold, for the benefit of the district.

**Elections as to Separate Officers for District; Notice**

Sec. 29. After the establishment of a district, and upon the petition of not less than

five per cent (5%) of the qualified taxpaying voters thereof, the court may order an election to determine whether or not such district shall have a separate tax assessor, separate tax collector, and separate board of equalization for the assessment and collection of district taxes. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the said Trustees shall appoint a suitable person as assessor and other such person as collector, and they shall give bond and exercise the same powers and perform the same duties as provided herein for the County Assessor and Collector; and the Trustees shall exercise all of the powers herein conferred upon said court with relation to the equalization of taxes. The general laws relating to the assessment, collection and equalization of taxes, in so far as applicable, shall apply to the assessment, collection and equalization of district taxes.

#### County Treasurer's Duties

Sec. 30. The County Treasurer shall open an account with the district and keep an accurate account of all money received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two members of the Board of Trustees. He shall carefully preserve on file all orders for the payment of money, and as often as required by the Trustees or the court, he shall render a correct account to them of all matters pertaining to the financial condition of the district.

#### Compensation of Treasurer

Sec. 31. The treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district, and one-eighth of one per cent upon all money by him paid out upon the order of the district. He shall not be entitled to any commissions on any district money received by him from his predecessor in office.

#### Payment of Obligations Incurred in Establishing District; Sources

Sec. 32. After the establishment of a Public Hospital District all legal and just expenses, debts, and obligations other than bonds and interest thereon arising and created after the filing of the original petition and necessarily incurred in the creation, establishing, operation, and maintenance of such Public District Hospital shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all money, effects, property, and proceeds received by such district from all sources, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it falls due and the payment of bonds at maturity. Said tax collections shall be placed in and paid out of the interest and sinking fund of such district for such purposes, and such fund may be invested for the benefit of the district in

such bonds and securities as the Attorney General may approve. Such funds shall be held for the respective purposes for which they were created, and if money is improperly paid out of either, the Commissioners Court may cause the County Treasurer to make the necessary transfer of such amount in the district accounts to restore the fund so improperly used.

#### Powers of Districts

Sec. 33. All Public Hospital Districts organized under the provisions of this Act shall have the power:

(a) To construct, condemn and purchase, purchase and acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the Board of Trustees and constituted in the same manner and by the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the State of Texas in the acquisition of property rights. It is provided, however, that no Public Hospital District shall have the right of eminent domain and the power of condemnation against any hospital, clinic, or sanatorium operated as a charitable, non-profit establishment or against a hospital, clinic or sanatorium operated by a religious group or organization, or against any privately owned or operated hospital or clinic, corporate or otherwise, in said district;

(b) To lease existing hospitals and equipment and/or other property used in connection therewith, and to pay such rental therefor as the Trustees shall deem proper; to provide hospital service for residents of said district in hospitals located outside the boundaries of said district, by contract or in any other manner said Trustees may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospital and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper; provided, that it must at all times make adequate provision for the needs of the district, and residents of said district shall have prior rights to the available facilities of said

hospitals, at rates set by the District Trustees;

(c) For the purposes aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance and operation of any such hospital, except as herein duly excepted in paragraph (a) of this section;

(d) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the public hospitals thereof, and to issue bonds as herein provided;

(e) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this Act;

(f) To sue and be sued in any court of competent jurisdiction; provided, that said Public Hospital District shall not be liable for negligence for any act of any officer, agent or employee of said district; and provided that all suits against the Public Hospital District shall be brought in the county in which the Public Hospital District is located;

(g) To make contracts, employ superintendents, attorneys and other technical or professional assistance and all other employees; to print and publish information or literature and to do all other things necessary to carry out the provisions of this Act.

**Contracts Exceeding \$2000; Competitive Bidding;  
Bond of Contractor**

Sec. 34. Any contract of any nature whatsoever entered into by the Board of Trustees on behalf of said Public Hospital District in excess of Two Thousand Dollars (\$2,000.00) shall be let to the lowest bidder after advertising the same in one or more newspapers of general circulation in this state once a week for four consecutive weeks, and by posting notices thereof for at least twenty-five (25) days in four public places in the county, one at the courthouse door and at least two within the district. Any person, firm, or corporation desiring to bid on any such contract shall, upon application to the Trustees, be furnished with a copy of the plans and specifications or other data necessary in making said bid. All bids shall be in writing and sealed and delivered to the chairman of the Board of Trustees, with a certified check for at least five per cent (5%) of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any bid may be rejected if deemed too high. The contractor shall give bond in the amount of the contract price, payable to the Trustees, condi-

tioned that he will faithfully perform the obligations, agreements, and covenants of the contract, and that in default thereof he will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the Board of Trustees.

[Acts 1957, 55th Leg., p. 406, ch. 199.]

**Art. 4494p. Optional Hospital District Law of 1957**

**Short Title**

Sec. 1. This Act shall be known and may be cited as the Optional Hospital District Law of 1957.

**Purpose**

Sec. 2. The purpose of this Act is to provide a method for establishment and administration of county-wide hospital districts, in addition to the method provided in Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended;<sup>1</sup> and this Act shall in no way be considered as an amendment to any existing hospital district law nor shall it in any way be construed or considered as a repeal of any existing laws, but shall be cumulative of any and all existing laws providing for the creation and management of hospital districts. Any county may elect under which Act it desires to create its hospital district, and when it has so elected it shall be governed by the specific law under which it was so created unless and until changed by an election as provided in Section 18 of this Act.

<sup>1</sup> Article 4494u.

**Creation of District**

Sec. 3. (a) Any county authorized to establish a hospital district pursuant to Section 4 of Article IX of the Constitution of Texas, that does not own or operate, or that does own and operate a hospital or hospital system, by itself or jointly with a city, for indigent and needy persons, may be constituted a hospital district as hereinafter set out, and may take over the hospital or hospital system, either owned separately by a county or jointly with a city, or may provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to the indigent and needy persons residing in the hospital district; provided, however, that such hospital district shall not be created unless and until an election is duly held in the county for such purpose, which election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty days from the time the election is ordered by the Commissioners Court.

(b) At the time the order for the holding of such election is entered by the Commissioners Court, the Commissioners Court shall determine the amount of tax needed for the operation and maintenance of such hospital system and the retirement of any outstanding bonded indebtedness which is to be assumed by such district not to exceed seventy-five cents (75¢)

on the One Hundred Dollars (\$100) assessed valuation.

(c) At the election there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a hospital district shall be created in the county; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

"FOR the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount determined by order of the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation"; and

"AGAINST the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount determined by order of the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation."

If such county or city, either or both of them, has any outstanding bonds theretofore issued for hospital purposes (which by the provisions of Section 6 of this Act are required to be assumed by the hospital district), then the ballots for such election shall, instead of the foregoing, have printed thereon:

"FOR the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount of tax determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes"; and

"AGAINST the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount of tax determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes."

#### Taxes of District; Deposit of Taxes and Other Income

Sec. 4. (a) The Commissioners Court of any county which has voted to create a hospital district shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the district at the same time taxes are levied for county purposes, using the county values and the county tax roll, a tax of not to exceed the amount determined by the Commissioners Court in calling the election

and so stated on the ballot in which the district was approved, on the One Hundred Dollars (\$100) valuation of all taxable property within the hospital district, for the purpose of:

(1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the hospital district for hospital purposes, as herein provided;

(2) providing for the operation and maintenance of the hospital or hospital system; and

(3) for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

(b) The tax so levied shall be collected on all property subject to hospital district taxation by the assessor and collector of taxes for the county on the county tax values, and in the same manner and under the same conditions as county taxes. The assessor and collector of taxes shall charge and deduct from payments to the hospital district the fees for assessing and collecting the tax at the rate of not exceeding one and one-half per cent (1½%) of the amounts collected as may be determined by the Commissioners Court. Such fees shall be deposited in the county's general fund, and shall be reported as fees of office of the tax assessor and collector. Interest and penalties on taxes paid to the hospital district shall be the same as in the case of county taxes. Discounts shall be the same as for county taxes. The residue of tax collections, after deduction of discounts and fees for assessing and collecting, shall be deposited in the district depository; and such funds shall be withdrawn only as provided herein. All other income of the hospital district shall be deposited in like manner with the district depository. Warrants against hospital district funds shall not require the signature of the county clerk.

(c) The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the hospital district is established, for the purpose of securing funds to initiate the operation of the hospital district, and to pay assumed bonds.

(d) After the creation of such district the tax levy so approved in the creation of the district shall not be increased unless and until an election is duly held in the county for such purpose, which election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time the election is ordered by the Commissioners Court. In calling the election the Commissioners Court shall determine the amount of increase in the tax levy needed for the proper maintenance of such hospital system, provided the increase together with the existing levy for the district shall not exceed seventy-five cents (75¢) in any one year. There shall be submit-

ted to the qualified property taxpaying voters the proposition of whether or not the tax levy for the hospital district shall be increased, and a majority of the qualified property taxpaying voters participating in the election voting in favor of the proposition shall be necessary. The ballot shall have printed thereon:

"FOR the increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation"; and

"AGAINST the increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation."

(e) Increases in such hospital district tax levy may be had in the above manner from time to time so long as the total levy never exceeds seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation.

**Bonds of District; Taxes to Pay Bonds and Interest;  
Sinking Funds**

Sec. 5. (a) The Commissioners Court shall have the power and authority to issue and sell as the obligations of such hospital district, and in the name and upon the faith and credit of such hospital district, bonds for the acquisition, purchase, construction, equipment and enlargement of the hospital or hospital system, and for any or all of such purposes; provided, that a sufficient tax shall be levied to create an interest and sinking fund to pay the interest and principal as same matures, but such tax together with any other taxes levied for the district shall not exceed seventy-five cents (75¢) in any one year. Such bonds shall be executed in the name of the hospital district and on its behalf by the county judge of the county within which the hospital district is created, and counter-signed by the county clerk, and shall be subject to the same requirements in the manner of approval thereof by the Attorney General of the State of Texas and the registration thereof by the Comptroller of Public Accounts of the State of Texas as are by law provided for such approval and registration of bonds of such county; and the approval of such bonds by the Attorney General shall have the same force and effect as is by law given to his approval of bonds of such county.

(b) No bonds shall be issued by such hospital district (except refunding bonds) until authorized by a majority vote of the legally qualified property taxpaying voters, residing in such hospital district, voting at an election called and held in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of the State of Texas (1925), as amended, relating to county bonds. Such election may be called by the Commissioners Court

at any time it deems advisable except that no election shall be held within two (2) years after a previous election. The same persons shall be responsible for the conduct of such election and the arrangement of all details thereof as the persons charged therewith in connection with other county-wide elections. The cost of any such election shall be a charge upon the hospital district and its funds; and the hospital district shall make provision for the payment thereof before the Commissioners Court shall be required to order such an election.

(c) In the manner hereinabove provided, the bonds of the hospital district may, without the necessity of any election therefor, be issued for the purpose of refunding and paying off any bonded indebtedness theretofore assumed by the hospital district and any bonds theretofore issued by the hospital district. Such refunding bonds may be sold and the proceeds thereof applied to the payment of any such outstanding bonds or may be exchanged in whole or in part for not less than a like amount of said outstanding bonds and interest matured thereon, but unpaid; provided the average interest cost per annum on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, shall not exceed the average interest cost per annum so computed upon the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of such proceeds. In the foregoing computations, any premium or premiums required to be paid upon the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the hospital district of the refunding bonds.

(d) If the city and the county, or either of them, has voted bonds to provide hospital facilities, but such bonds have not been sold at the date of the creation of the hospital district, the authority for such bonds shall be canceled, and they shall not be sold.

**County or City Property or Funds; Transfer to District**

Sec. 6. (a) Any lands, buildings or equipment that may be jointly or separately owned by such county and city, and by which medical services or hospital care, including geriatric care, are furnished to the indigent or needy persons of the city and county, shall become the property of the hospital district, and title thereto shall vest in the hospital district; and any funds of the city and county, or either, which are the proceeds of any bonds assumed by the hospital district, as hereby provided, shall become the funds of the hospital district, and title thereto shall vest in the hospital district; and there shall vest in the hospital district and become the funds of the hospital district the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the city or the county, or either of

them, for the support and maintenance of the hospital facilities for the year within which the hospital district comes into existence, thereby providing such hospital district with funds with which to maintain and operate such facilities for the remainder of such year. All obligations under contract legally incurred by the city or county, or either of them, for the building of, or the support and maintenance of, hospital facilities, prior to the creation of the district but outstanding at the time of the creation of the district, shall be assumed and discharged by it without prejudice to the rights of third parties. As soon as practicable after the declaration of the result of the election, the board of managers of the existing hospital system shall turn over all records, property and affairs of the hospital system to the board of managers of the hospital district and shall cease to exist as a hospital system board of managers.

(b) Any outstanding bonded indebtedness incurred by the city or county, either or both of them, in the acquisition of lands, buildings and equipment for such hospital system, or in the construction and equipping of such hospital facilities, together with any other outstanding bonds issued by either of them for hospital purposes, and the proceeds of which are in whole or in part still unspent, shall be assumed by the hospital district and become the obligation of the hospital district; and the city or county, either or both of them, that issued such bonds, shall be by the hospital district relieved of any further liability for the payment thereof, or for providing interest and sinking fund requirements thereon; provided that nothing herein contained shall limit or affect any of the rights of any of the holders of such bonds against the city or the county, as the case may be, in the event of default in the payment of the principal or interest on any of such bonds in accordance with their respective terms.

(c) As soon as the hospital district is created and authorized at the election hereinabove provided, the Commissioners Court acting for the county and the city governing board acting for the city shall execute and deliver to the board of managers of the hospital district an instrument in writing conveying to the hospital district the hospital property, including lands, buildings and equipment owned by the county or the city or jointly owned by the county and the city; and shall transfer to the hospital district the funds hereinabove provided to become vested in the hospital district, upon being furnished the certificate of the chairman of the board to the fact that a depository for the district's funds has been selected and has qualified; which funds shall, in the hands of the hospital district and of its board of managers, be used for all or any of the same purposes as, and for no other purposes than, the purposes for which the county or the city transferring such funds could lawfully have used the same had they remained the property and funds of such county or city.

## Board of Managers

Sec. 7. (a) The Commissioners Court is hereby designated as the board of managers of the hospital district with the county judge as chairman thereof and they shall serve in this capacity without any compensation other than that provided by law for county judges and commissioners, and whose duty shall be to manage, control and administer the hospital or hospital system of the hospital district. The board of managers shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the hospital or hospital system.

(b) The board shall appoint a general manager, to be known as the administrator of the hospital district. The administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the board. The administrator shall be subject to removal at any time by the board. The administrator shall, before entering into the discharge of his duties, execute a bond payable to the district, in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the board may require. The administrator shall perform all duties which may be required of him by the board, and shall supervise all of the work and activities of the district, and have general direction of the affairs of the district, within such limitations as may be prescribed by the board. He shall be a person qualified by training and experience for the position of administrator.

(c) The board of managers shall have the authority to employ such doctors, technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system; provided that no contract of employment shall exceed the period of two years.

(d) The Commissioners Court as the board of managers of such district may include the employees of such district in any county employees' pension or retirement program now in existence or which may be created in the future for the benefit of such district's employees.

(d) The county clerk shall act as secretary to the board of managers and shall keep suitable records of all proceedings of each meeting of the board. The seal of the Commissioners Court of such county shall be the seal of the district and used in the authentication of all acts of the board.

## Powers of Commissioners Court; Duties of District, County Officers, Employees or Agents

Sec. 8. The Commissioners Court shall have the power to prescribe the method and manner of making purchases and expenditures by and for the hospital district, and also shall be authorized to prescribe all accounting and control procedures. The hospital district shall pay all

salaries and expenses necessarily incurred by the county or any of its officers and agents in performing any duties which may be prescribed or required under this section. It shall be the duty of any officer, employee or agent of such county to perform and carry out any function or service prescribed by the Commissioners Court hereunder.

#### Assistant to Administrator

Sec. 9. In the event of incapacity, absence or inability of the administrator to discharge any of the duties required of him, the board may designate an assistant to the administrator to discharge any duties or functions required of the administrator. Such assistant or other persons shall give such bond and have such limitations upon his authority as may be fixed by the order of the board.

#### Reports of Administrator; Budget

Sec. 10. Once each year, as soon as practicable after the close of the fiscal year, the administrator of the hospital district shall report to the Commissioners Court, the State Board of Health and the State Comptroller a full sworn statement of all moneys and choses in action received by such administrator and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the district for the term. He shall prepare an annual budget which shall be subject to approval by the Commissioners Court. In like manner all budget revisions shall be subject to approval by the Commissioners Court.

#### Eminent Domain

Sec. 11. A hospital district organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the district, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by general law with respect to condemnation; provided that the district shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph numbered 2 in Article 3268, Revised Civil Statutes, 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Civil Appeals, or to the Supreme Court.

#### Depository for District; Selection

Sec. 12. Within thirty (30) days after the creation of any district under this Act, the

board of managers shall select a depository for the district in the manner provided by law for the selection of county depositories; and such depository shall be the depository of the district for a period of two (2) years thereafter, until its successor is selected and qualified. In the alternative, the board may elect to use the depository theretofore selected by the county.

#### Inspection of Districts

Sec. 13. All hospital districts established or maintained under the provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any other state board hereafter created or designated to exercise supervision over hospitals, and resident officers shall admit such representatives into all hospital district facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the hospital district.

#### Legal Representative of District

Sec. 14. It shall be the duty of the county attorney, district attorney or criminal district attorney, as the case may be, charged with the duty of representing the county in civil matters, to represent the hospital district in all legal matters; provided, however, that the board of managers shall be authorized at its discretion to employ additional legal counsel when the board deems advisable.

The hospital district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney or criminal district attorney, as the case may be, to pay all additional salaries and expenses incurred by such officer in performing the duties required of him by the district.

#### Medical and Hospital Care Assumed by District; Delinquent Taxes Owed to Cities and Counties

Sec. 15. (a) No county that has been constituted a hospital district, and no city therein, shall thereafter levy any tax for hospital purposes; and the hospital district shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in the hospital district.

(b) That portion of delinquent taxes owed cities and counties on levies for separate or joint city and county hospital systems, or for the payment of bonds issued by such systems, shall continue to be paid to the hospital district by the city and county as collected, and applied by the hospital district to the purposes for which such taxes originally were levied.

#### Patients; Inquiry as to Ability to Pay

Sec. 16. (a) The Commissioners Court as the board of managers for such hospital system shall by order duly entered in the record of the hospital district set forth in detail its definition of an indigent or needy person so as to determine who is qualified for admission to the



facilities of the hospital district. Such order shall also state in detail under what basis any person shall be admitted on an emergency basis without regard to indigency and how long and on what basis such person shall be permitted to stay in such district facilities.

(b) The board shall have the right to set up such requirements of proof of indigency as it sees fit, including affidavits of inability to pay, and may employ such personnel as necessary for the purpose of handling admissions and determining the eligibility of admissions.

(c) Any person who makes a false statement for the purpose of obtaining admission to the hospital district facilities and who is able to pay for such hospital care shall be liable for such care and shall also be guilty of a misdemeanor and punishable by a fine not to exceed Two Hundred Dollars (\$200).

Donations, Gifts and Endowments for District;  
Payments by the State

Sec. 17. (a) The board of managers of the hospital district is authorized on behalf of the district to accept donations, gifts, and endowments for the hospital district, to be held in trust and administered by the board of managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by the donor, not inconsistent with proper management and objects of the hospital district.

(b) The board of managers is expressly authorized to contract with the State for the receipt of any payments or grants which may be provided by the State for the care or treatment of hospital patients, and to receive any payments or grants which may be made by the State for the care and treatment of patients in the facilities of the hospital district.

Conversion of District

Sec. 18. (a) Any hospital district heretofore or hereafter created in accordance with Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended,<sup>1</sup> may be converted into a district subject to the provisions of this Act, or any district created in accordance with this Act may be converted into a district subject to the provisions of the said Chapter 266, in the following manner. Upon petition to the Commissioners Court by qualified property taxpaying voters of the district equal in number to five per cent (5%) of the property taxpayers of the county as shown by the current assessment rolls of the county, requesting the calling of an election on the question of conversion, the Commissioners Court within twenty (20) days after receipt of the petition shall order such election, to be held not less than thirty (30) days nor more than ninety (90) days from the time the election is ordered by the Commissioners Court. At the election there shall be submitted to the qualified property taxpaying voters of the district the proposition of whether or not the district is to be converted, and a majority of the qualified property taxpaying voters participating in the election shall determine the result thereof.

(b) If the election is on the question of conversion of a district created in accordance with this Act, the ballot shall have printed thereon:

“FOR conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation.”

If the election is on the question of conversion of a district created in accordance with the said Chapter 266, at the time the order for holding such election is entered the Commissioners Court shall determine the amount of tax needed for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed by the district originally created (but excluding any bonds issued by the district); (2) providing for the operation and maintenance of the hospital or hospital system; and (3) making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor. If there are no outstanding bonds issued by the district, the ballot shall have printed thereon:

“FOR conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation.”

If there are outstanding bonds issued by the district, the ballot shall have printed thereon:

“FOR conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital Dis-

trict Law of 1957, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation"; and

"AGAINST conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation."

(c) If the proposition fails to carry at the election, no further election on the proposition shall be held for a period of two (2) years. If a majority of the qualified taxpaying voters

participating in the election vote in favor of the proposition, the conversion shall become effective thirty (30) days after declaration of the result of the election. The identity of the district shall not be affected by the conversion, and the district shall be liable for all outstanding debts and obligations as fully as when originally assumed or incurred by it. However, any bonds voted by a district originally created under Chapter 266 which have not been issued on the date of the election for conversion shall not be issued and the authority for such bonds shall be canceled. Upon conversion of a district from one operated under Chapter 266 to one operated under this Act, the district shall not have the power to levy a tax in excess of the amount determined by the Commissioners Court in its order calling the election for any purposes other than providing a sinking fund for payment of interest on and principal of unpaid bonds issued by the district prior to the conversion.

(d) At any time after five (5) years from the date of a conversion, a further election on the question of reconversion may be held in the manner herein provided for the original conversion.

[Acts 1957, 55th Leg., p. 1398, ch. 482.]

<sup>1</sup> Article 4494n.

**Art. 4494q. Particular Hospital Districts**

[The hospital districts listed below have been created by special acts.]

**HOSPITAL DISTRICTS**

<b>Name</b>	<b>Creation</b>
Amarillo, City of -----	Acts 1957, 55th Leg., p. 298, ch. 136, amended by Acts 1971, 62nd Leg., p. 1172, ch. 275.
Angleton-Danbury -----	Acts 1967, 60th Leg., p. 208, ch. 120, amended by Acts 1971, 62nd Leg., p. 1166, ch. 271.
Anson -----	Acts 1973, 63rd Leg., p. 1555, ch. 562.
Archer County -----	Acts 1963, 58th Leg., p. 349, ch. 133.
Atascosa County, Poteet -----	Acts 1965, 59th Leg., p. 1339, ch. 609.
Bailey County -----	Acts 1969, 61st Leg., p. 253, ch. 100, amended by Acts 1973, 63rd Leg., p. 3, ch. 3.
Blanco Memorial -----	Acts 1967, 60th Leg., p. 830, ch. 349, amended by Acts 1969, 61st Leg., p. 1078, ch. 354.
Booker County -----	Acts 1963, 58th Leg., p. 999, ch. 411, amended by Acts 1973, 63rd Leg., p. 1402, ch. 541.
Brazoria, West Columbia -----	Acts 1963, 58th Leg., p. 808, ch. 310.
Brooks County -----	Acts 1963, 58th Leg., p. 1358, ch. 516.
Cameron County -----	Acts 1969, 61st Leg., p. 1934, ch. 646.
Caprock -----	Acts 1963, 58th Leg., p. 642, ch. 238.
Castro County -----	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, c. 424.
Childress County -----	Acts 1965, 59th Leg., p. 1483, ch. 647.
Cisco -----	Acts 1965, 59th Leg., p. 81, ch. 30.
Cochran Memorial -----	Acts 1967, 60th Leg., p. 1113, ch. 494.
Collingsworth County -----	Acts 1967, 60th Leg., p. 578, ch. 262.
Colorado City -----	Acts 1967, 60th Leg., p. 1065, ch. 466, amended by Acts 1973, 63rd Leg., p. 820, ch. 371.
Comanche County	
(County Commissioners Precincts Nos. 1, 2, 3) -----	Acts 1973, 63rd Leg., p. 466, ch. 203.
(County Commissioners Precinct No. 4) -----	Const. Art. 9, § 8. Acts 1959, 56th Leg., 1st C.S., p. 22, ch. 9, amended by Acts 1961, 57th Leg., p. 114, ch. 61 and Acts 1961, 57th Leg., p. 798, ch. 365 repealed by Acts 1973, 63rd Leg., p. 465, ch. 202, § 24 (see, now, DeLeon).
Concho County -----	Acts 1971, 62nd Leg., p. 2680, ch. 877.
Corrigan -----	Acts 1971, 62nd Leg., p. 1420, ch. 396.
Cuero, De Witt County -----	Acts 1965, 59th Leg., p. 625, ch. 310.
Damon -----	Acts 1963, 58th Leg., p. 808, ch. 310.
Darrouzett -----	Acts 1973, 63rd Leg., p. 1390, ch. 539.
Deaf Smith County -----	Acts 1971, 62nd Leg., p. 663, ch. 59.
DeLeon -----	Acts 1973, 63rd Leg., p. 456, ch. 202.
Denton County -----	Acts 1969, 61st Leg., p. 677, ch. 230.
De Witt County, Cuero -----	Acts 1965, 59th Leg., p. 625, ch. 310.
Dickens County -----	Acts 1969, 61st Leg., p. 2607, ch. 865.
Donley County -----	Acts 1969, 61st Leg., p. 2035, ch. 699, amended by Acts 1973, 63rd Leg., p. 10, ch. 8.
Earth-Springlake -----	Acts 1967, 60th Leg., p. 283, ch. 134, amended by Acts 1969, 61st Leg., p. 12, ch. 5, § 1.
East Coke County -----	Acts 1969, 61st Leg., p. 1485, ch. 444.
East Wise County -----	Acts 1969, 61st Leg., p. 1538, ch. 467.
Edna -----	Acts 1967, 60th Leg., p. 355, ch. 172.
Electra -----	Acts 1973, 63rd Leg., p. 1348, ch. 513.
Fannin County -----	Acts 1969, 61st Leg., p. 1641, ch. 513.

Name	Creation
Fisher County .....	Acts 1973, 63rd Leg., p. 1236, ch. 448.
Foard County .....	Acts 1969, 61st Leg., p. 2088, ch. 717.
Garza .....	Acts 1967, 60th Leg., p. 1132, ch. 502.
Grapeland .....	Acts 1971, 62nd Leg., p. 1628, ch. 455.
Gray County .....	Acts 1965, 59th Leg., p. 919, ch. 454.
Greenville .....	Acts 1967, 60th Leg., p. 230, ch. 125, amended by Acts 1969, 61st Leg., p. 2554, ch. 853.
Groveton .....	Acts 1971, 62nd Leg., p. 2689, ch. 878.
Hamlin .....	Acts 1973, 63rd Leg., p. 1545, ch. 561.
Hansford County .....	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, ch. 424. Acts 1971, 62nd Leg., p. 2650, ch. 872.
Harrison County .....	Acts 1969, 61st Leg., p. 1022, ch. 333.
Haskell County .....	Acts 1967, 60th Leg., p. 1177, ch. 528.
Henderson County .....	Acts 1971, 62nd Leg., p. 2669, ch. 874.
Hidalgo County .....	Const. Art. 9, § 7. Acts 1959, 56th Leg., p. 1027, ch. 475.
Hood County .....	Acts 1971, 62nd Leg., p. 2594, ch. 852.
Hopkins County .....	Const. Art. 9, § 11. Acts 1961, 57th Leg., 1st C.S., p. 165, ch. 43, amended by Acts 1965, 59th Leg., p. 18, ch. 9.
Hunt County .....	Acts 1965, 59th Leg., p. 730, ch. 344, repealed by Acts 1967, 60th Leg., p. 230, ch. 125, § 20.
Jasper .....	Acts 1963, 58th Leg., p. 96, ch. 56, amended by Acts 1963, 58th Leg., p. 198, ch. 109.
Jefferson County .....	Const. Art. 9, § 5. Acts 1959, 56th Leg., p. 987, ch. 462. Acts 1963, 58th Leg., p. 1199, ch. 479, repealed by Acts 1967, 60th Leg., p. 1120, ch. 495, § 20.
Karnes County .....	Acts 1969, 61st Leg., p. 1764, ch. 591, amended by Acts 1973, 63rd Leg., p. 147, c. 78.
Kimble County .....	Acts 1971, 62nd Leg., p. 2662, ch. 873.
Knox County .....	Acts 1967, 60th Leg., p. 546, ch. 241.
Lamar County .....	Const. Art. 9, § 6. Acts 1959, 56th Leg., p. 917, ch. 422, amended by Acts 1961, 57th Leg., p. 19, ch. 10; Acts 1967, 60th Leg., p. 1078, ch. 472.
Livingston .....	Acts 1971, 62nd Leg., p. 1430, ch. 397.
Lockney General .....	Acts 1973, 63rd Leg., p. 110, ch. 58.
Lubbock County .....	Acts 1967, 60th Leg., p. 1095, ch. 484.
Lynn County .....	Acts 1967, 60th Leg., p. 122, ch. 66.
Mabank-Kemp .....	Acts 1973, 63rd Leg., p. 26, ch. 22.
Marion County .....	Acts 1967, 60th Leg., p. 394, ch. 184.
Martin County .....	Acts 1967, 60th Leg., p. 1774, ch. 674.
Matagorda County .....	Acts 1965, 59th Leg., p. 106, ch. 41.
Mathis .....	Acts 1965, 59th Leg., p. 945, ch. 460.
Maverick County .....	Acts 1965, 59th Leg., p. 360, ch. 172.
McCamey County .....	Acts 1967, 60th Leg., p. 385, ch. 183.
Merkel .....	Acts 1967, 60th Leg., p. 170, ch. 90.
Mid-Crosby County .....	Acts 1963, 58th Leg., p. 337, ch. 129.
Moore County .....	Acts 1969, 61st Leg., p. 859, ch. 287.
Mofley County .....	Acts 1965, 59th Leg., p. 965, ch. 465, amend- ed by Acts 1967, 60th Leg., p. 724, ch. 304.
Muenster .....	Acts 1965, 59th Leg., p. 984, ch. 477, amended by Acts 1967, 60th Leg., p. 1206, ch. 541.
Nacogdoches County .....	Acts 1967, 60th Leg., p. 987, ch. 431.
Nixon .....	Acts 1965, 59th Leg., p. 1461, ch. 644.
Nocona .....	Acts 1971, 62nd Leg., p. 2637, ch. 868.
North Cherokee County .....	Acts 1967, 60th Leg., p. 471, ch. 215.
North Jefferson County .....	Acts 1967, 60th Leg., p. 1120, ch. 495.
North Runnels County .....	Acts 1969, 61st Leg., p. 601, ch. 206.
North Wheeler County .....	Acts 1963, 58th Leg., p. 703, ch. 260.

Name	Creation
Ochiltree County .....	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, ch. 424.
Olton .....	Acts 1969, 61st Leg., p. 2151, ch. 746.
Palo Pinto County .....	Acts 1965, 59th Leg., p. 201, ch. 84, amended by Acts 1965, 59th Leg., p. 1140, ch. 536.
Parker County .....	Acts 1965, 59th Leg., p. 93, ch. 35.
Polk County .....	Acts 1967, 60th Leg., p. 1229, ch. 558.
Poteet, Atascosa County .....	Acts 1965, 59th Leg., p. 1339, ch. 609.
Presidio County .....	Acts 1965, 59th Leg., p. 1455, ch. 643.
Ranger .....	Acts 1969, 61st Leg., p. 238, ch. 93.
Rankin County .....	Acts 1967, 60th Leg., p. 375, ch. 182.
Red River County .....	Acts 1971, 62nd Leg., p. 1566, ch. 424.
Rising Star .....	Acts 1967, 60th Leg., p. 996, ch. 432.
San Augustine City-County .....	Acts 1971, 62nd Leg., p. 8, ch. 5.
Schleicher County .....	Acts 1967, 60th Leg., p. 73, ch. 38, amended by Acts 1973, 63rd Leg., p. 853, ch. 387.
Seminole .....	Acts 1971, 62nd Leg., p. 854, ch. 102.
Sinton-Odem .....	Acts 1965, 59th Leg., p. 954, ch. 461.
South Eastland County .....	Acts 1969, 61st Leg., p. 1720, ch. 569, amended by Acts 1971, 62nd Leg., p. 893, ch. 122.
South Limestone .....	Acts 1969, 61st Leg., p. 1903, ch. 638.
South Randall County .....	Acts 1971, 62nd Leg., p. 1017, ch. 200.
South Wheeler County .....	Acts 1963, 58th Leg., p. 711, ch. 261.
Stamford .....	Acts 1965, 59th Leg., p. 255, ch. 108, amended by Acts 1973, 63rd Leg., p. 1567, ch. 563.
Starr County .....	Acts 1973, 63rd Leg., p. 243, ch. 118.
Stonewall County .....	Acts 1963, 58th Leg., p. 89, ch. 54.
Stratford .....	Acts 1969, 61st Leg., p. 1552, ch. 470.
Sweeny .....	Acts 1963, 58th Leg., p. 361, ch. 135, amended by Acts 1967, 60th Leg., p. 862, ch. 367; Acts 1973, 63rd Leg., p. 212, ch. 95.
Swisher .....	Acts 1965, 59th Leg., p. 41, ch. 16.
Taft .....	Acts 1965, 59th Leg., p. 1236, ch. 567, amend- ed by Acts 1973, 63rd Leg., p. 1386, ch. 534.
Teague .....	Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 39.
Terry .....	Acts 1965, 59th Leg., p. 1502, ch. 653.
Texhoma Memorial .....	Acts 1967, 60th Leg., p. 954, ch. 422.
Titus County .....	Acts 1963, 58th Leg., p. 771, ch. 298, amended by Acts 1973, 63rd Leg., p. 368, ch. 165.
Tyler County .....	Acts 1963, 58th Leg., p. 201, ch. 110.
Uvalde County .....	Acts 1965, 59th Leg., p. 152, ch. 64.
Van Zandt County .....	Acts 1971, 62nd Leg., p. 2622, ch. 861.
Walker County .....	Acts 1971, 62nd Leg., p. 2583, ch. 848.
West Coke County .....	Acts 1963, 58th Leg., p. 825, ch. 315, amended by Acts 1967, 60th Leg., p. 679, ch. 283.
West Columbia-Brazoria .....	Acts 1963, 58th Leg., p. 808, ch. 310.
West Columbia-Damon .....	Acts 1967, 60th Leg., p. 941, ch. 415.
West Grayson .....	Acts 1967, 60th Leg., p. 94, ch. 46.
Wichita County .....	Const. Art. 9, § 5. Acts 1961, 57th Leg., p. 731, ch. 343, amended by Acts 1963, 58th Leg., p. 1276, ch. 491.
Wilbarger County .....	Acts 1965, 59th Leg., p. 9, ch. 6, amended by Acts 1973, 63rd Leg., p. 6, ch. 5.
Willacy County .....	Acts 1969, 61st Leg., p. 1133, ch. 367, repealed by Acts 1971, 62nd Leg., p. 1280, ch. 323, § 24. Acts 1971, 62nd Leg., p. 1270, ch. 323.
Wood County Central .....	Acts 1967, 60th Leg., p. 705, ch. 293.
Yoakum .....	Acts 1965, 59th Leg., p. 651, ch. 317.

**Art. 4494r. County Hospital Authority Act****Creation of Authorities**

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

**Definitions**

Sec. 2. As used in this law, "County" means any county in the State of Texas; "Governing Body" means the Commissioners Court of a county; "Authority" means a County Hospital Authority created under this Act; "Board" or "Board of Directors" means the board of directors of the Authority; "Bond Resolution" means the resolution authorizing the issuance of revenue bonds; "Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority; "Trustee" means the trustee under the Trust Indenture.

**Order; Territory of Authority; Body Politic and Corporate; Powers**

Sec. 3. When the Governing Body of a county shall find that it is to the best interest of the County and its inhabitants to create a County Hospital Authority, it shall pass an order creating the Authority and designating the name by which it shall be known. The Authority shall comprise only the territory included within the boundaries of such County and shall be a body politic and corporate and a political subdivision of the State. It shall have the power of perpetual succession, have a seal, may sue and be sued and may make, amend and repeal its bylaws.

**Board of Directors; Appointment; Terms; Expenses**

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the County, and they shall serve until their successors are appointed as hereinafter provided. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the County. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the County for terms not to exceed three (3) years, but the terms of Directors ap-

pointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such County shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

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

**Officers; Quorum; Manager or Executive Director of Hospital**

Sec. 5. The Board of Directors shall elect from among their members a president and vice president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. The Board shall employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, but it may delegate to the manager the power to employ and discharge employees. The Board may employ legal counsel.

**Construction, Operation and Equipment of Hospitals**

Sec. 6. The Authority shall have the power to construct, enlarge, furnish and equip hospitals, purchase existing hospitals, furnishings and equipment for its hospitals, and to operate and maintain hospitals. A hospital must be located within the County creating the Authority.

**Revenue Bonds**

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of the net revenues to be derived from the operation of the hospital or hospitals and any other revenues resulting from the ownership of the hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

**Content of Bonds; Maturity**

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be

printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the interest cost to the Authority, including the discount, if any, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

**Bond Resolution; Publication; Referendum Petition**

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

(b) If, prior to the day set for the adoption of the Bond Resolution, there is presented to the secretary or president of the Board of Directors a petition signed by not less than ten per cent (10%) of the qualified voters residing within the boundaries of the County comprising the Authority, who own taxable property in the Authority and who have duly rendered the same for taxation to the County in which such property is located or situated, requesting an election on the proposition for the issuance of the bonds, the bonds shall not be issued unless an election is held and a majority vote is in favor of the bonds. Such election shall be called and held in accordance with the procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of 1925, as amended, with the Board of Directors, president and secretary performing the functions therein assigned to the governing body of the County, the County Judge and County Clerk respectively. If no such petition is filed the bonds may be issued without an election. It is provided, however, that the Board of Directors may call such election on its own motion without the filing of the referendum petition.

**Junior Lien Bonds; Parity Bonds**

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

**Payment of Interest**

Sec. 11. Money for the payment of not more than two (2) years' interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation may be set aside for those purposes out of the proceeds from the sale of the bonds.

**Refunding Outstanding Bonds**

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

**Approval of Bonds by Attorney General; Registration; Incontestability; Contents**

Sec. 13. Bonds issued under this Act and the record relating to their issuance shall be submitted to the Attorney General of Texas and if he finds that they have been issued in accordance with this law and constitute valid and binding obligations of the Authority and are secured as recited therein he shall approve them, and they shall be registered by Comptroller of Public Accounts of the State of Texas who shall certify such registration thereon. Thereafter they shall be incontestable. The bonds shall be negotiable and shall contain the following provision:

"The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

**Operation of Hospital; Rates for Services**

Sec. 14. The Hospital shall be operated without the intervention of private profit for the use and benefit of the public. But it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the Hospital shall be operated.

**Depository**

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

**Tax Exemption**

Sec. 16. Recognizing the fact that the property owned by Authority will be held for pub-

lic purposes only and will be devoted exclusively to the use and benefit of the public, it shall be exempt from taxation of every character.

#### Eminent Domain

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

#### Investment of Funds

Sec. 18. The law as to the security for and the investment of funds, applicable to Counties, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States Government, to the extent authorized in the Bond Resolution or Indenture or in both.

#### Donations, Gifts and Endowments

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

#### Legal and Authorized Investments

Sec. 20. All bonds of the Authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1963, 58th Leg., p. 324, ch. 122.]

#### Art. 4494r-1. Issuing and Refunding Revenue Bonds

Sec. 1. All hospital districts heretofore or hereafter created pursuant to Article IX, Section 9, of the Constitution are hereby authorized to issue, and to refund any previously issued, revenue bonds for purchasing, constructing, acquiring, repairing, equipping or renovating buildings and improvements for hospital purposes, and for acquiring sites therefor, such bonds to be payable from and secured by a

pledge of all or any part of the revenues of the district to be derived from the operation of its hospital or hospitals, and such bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its properties.

Sec. 2. Such bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of revenue bonds by County Hospital Authorities in Sections 8 to 13, both inclusive, and with effect specified in Section 20, of the County Hospital Authority Act, Chapter 122, Acts 1963, 58th Legislature (compiled as Article 4494r, Vernon's Texas Civil Statutes).

[Acts 1967, 60th Leg., p. 681, ch. 285, eff. May 25, 1967.]

#### Art. 4494r-2. Issuance of Revenue Bonds in Counties of 200,000 or More

Sec. 1. The commissioners court of every county containing a population of 200,000 or more, according to the last preceding federal census, wherein there exists a hospital district which has been created by law pursuant to any Section of Article IX of the Texas Constitution shall be authorized and have the power to issue revenue bonds for the purpose of providing funds to acquire, purchase, construct, repair, renovate, improve, enlarge, and/or equip any hospital facilities, and to acquire any real or personal property in connection therewith, for and on behalf of said hospital district. Provided however, that there shall be no authority to issue such revenue bonds on behalf of a hospital district for the purchase of nursing homes for long term care. Such commissioners court shall be authorized to issue said revenue bonds to be payable from and secured by liens on and pledges of all or any part of the revenues and income of every nature derived by the hospital district from the operation and/or ownership of its hospital facilities (exclusive of ad valorem taxes). Also, the commissioners court shall be authorized to pledge to the payment of said bonds all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise. Said bonds may be additionally secured by mortgages and deeds of trust on any real property on which any hospital facilities of the hospital district are or will be located, and any real or personal property incident or appurtenant to said facilities, and the commissioners court may authorize the execution and delivery of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence same. Said bonds may be issued to mature serially or otherwise not to exceed 40 years from their date. In the authorization of any such bonds, the commissioners court may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other types of bonds, under such terms or conditions as may be set forth in the order authorizing the issuance of said bonds, all within the discretion of the commissioners court. Said bonds,



and any interest coupons appertaining thereto, shall be negotiable instruments (provided that such bonds may be issued registrable as to principal alone or as to both principal and interest), and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at any rate or rates, all as shall be determined and provided by the commissioners court in the order authorizing the issuance of said bonds. If so permitted in the bond order, any required part of the proceeds from the sale of the bonds may be used for paying interest thereon during the period of the construction of any hospital facilities to be provided through the issuance of said bonds, and for the payment of operation and maintenance expenses of said facilities to the extent, and for the period of time, specified in said bond order, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys may be invested, until needed, to the extent, and in the manner provided, in said bond order. The commissioners court or the board of hospital managers or directors of the hospital district shall be authorized to fix and collect charges for the occupancy or use of any of said hospital facilities, and the services thereof, in such amounts and in such manner as may be determined by such commissioners court or board; and such charges shall be fixed and collected in such amounts as will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with said bonds, and, to the extent required by the bond order, to provide for payment of all or any part of the operation, maintenance, and other expenses of the hospital facilities. The commissioners court or the board of hospital managers or directors of the hospital district shall make provision in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district. In preparing the budget, the commissioners court or board may take into consideration the estimated excess revenues and income from hospital facilities that will be available for paying operation and maintenance expenses after providing for all principal, interest, and reserve requirements in connection with said bonds. To the extent that such excess revenues and income are not available at any time to make payment of all operation and maintenance expenses of the hospital district, ad valorem taxes of the hospital district shall be used to make such payment, and the proceeds of an annual ad valorem tax may be pledged for such payment in the order authorizing the issuance of said bonds. If such annual ad valorem tax is thus pledged it shall be the duty of the commissioners court, during each year while any of said bonds are outstanding, to compute and ascertain a rate and

amount of ad valorem tax which will be sufficient to raise and produce the money required to make the aforesaid payment of operation and maintenance expenses to the extent required; and said tax shall be based on the latest approved tax rolls of the hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied, and ordered to be levied, against all taxable property in the hospital district, for each year while any of said bonds are outstanding; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required. Said rate and amount of ad valorem tax shall be levied and ordered to be levied against all taxable property within the hospital district subject to hospital district taxation for each year while any of said bonds are outstanding; and said tax shall be assessed and collected each such year and used for such purposes to the extent so required.

Sec. 2. Any revenue bonds issued by any such commissioners court under this Act, and any revenue bonds issued by any such commissioners court under any other Texas statute and payable from revenues from any hospital facilities, may be refunded or otherwise refinanced by such commissioners court, and in such case all pertinent and appropriate provisions of this Act shall be fully applicable to such refunding bonds. In refunding or otherwise refinancing any such bonds the commissioners court may, in the same authorizing proceedings, refund or refinance bonds issued pursuant to this Act and bonds issued pursuant to any other such Texas statute and combine all said refunding bonds and any other additional new bonds to be issued pursuant thereto into one or more issues or series of bonds, and may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other type of bonds. All refunding bonds shall be issued and delivered under such terms and conditions as may be set forth in the authorizing proceedings.

Sec. 3. All bonds issued pursuant to this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

Sec. 4. All bonds issued pursuant to this Act shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, small business investment corporations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all

interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Sec. 5. In every case where a hospital district created by law pursuant to Article IX of the Texas Constitution does not have its ad valorem taxes levied for and on its behalf by the commissioners court of the county in which the hospital district is located, then, notwithstanding any provisions of this Act to the contrary, the board of directors or other governing body of the hospital district shall have all of the authority, powers, and duties provided for a commissioners court under this Act.

Sec. 6. This Act shall be cumulative of all other laws on the subject but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that any commissioners court shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1969, 61st Leg., p. 128, ch. 42, eff. April 1, 1969; Acts 1971, 62nd Leg., p. 1297, ch. 339, § 1, eff. May 24, 1971.]

#### Art. 4494r-3. County Hospital Revenue Bonds; Issue; Refunding

Sec. 1. All counties of this state are hereby authorized to issue, and to refund any previously issued, revenue bonds for purchasing, constructing, acquiring, repairing, equipping or renovating buildings and improvements for county hospital purposes, and for acquiring sites therefor, such bonds to be payable from and secured by a pledge of all or any part of the revenues of the county to be derived from the operation of its hospital or hospitals, and such bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its hospital properties.

Sec. 2. Such bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of

revenue bonds by County Hospital Authorities in Sections 8 to 13, both inclusive, and with effect specified in Section 20, of the County Hospital Authority Act, Chapter 122, Acts, 1963, 58th Legislature (compiled as Article 4494r, Vernon's Texas Civil Statutes).

Sec. 3. The powers granted under this Act shall be cumulative and in addition to all other powers of counties presently or hereafter in effect.

[Acts 1969, 61st Leg., p. 1958, ch. 658, eff. June 12, 1969.]

#### Art. 4494r-4. Adoption of Tax Rolls by Hospital Districts; Board of Equalization; Assessment and Collection of Taxes

Sec. 1. That hospital districts organized pursuant to the provisions of Article IX, Section 9, of the Constitution of the State of Texas, may prepare and adopt their own tax rolls. Prior to the levy of any taxes, the governing board of the hospital district shall appoint a board of equalization to be composed of five (5) resident property owners of the district and cause property to be assessed, evaluated, and equalized and the tax rolls to be prepared. The taxes of the hospital district shall be assessed and collected upon all taxable property situated within the district, subject to hospital district taxation by the assessor and collector of taxes for the county in which the hospital district is located, or the hospital district may appoint its own assessor and collector of taxes for the hospital district. Such taxes shall be assessed, equalized, and collected in the same manner and under the same conditions as county taxes, except as herein provided.

Sec. 2. If the hospital district prepares its first tax rolls, and the normal rendition period for county taxes has expired, the governing board of the hospital district shall give thirty (30) days written notice to all property owners to render their property to the hospital district's tax assessor and collector. After this period, the hospital district shall appoint its board of equalization who shall then proceed to equalize the taxes and establish the tax rolls as soon as possible.

[Acts 1971, 62nd Leg., p. 1954, ch. 595, eff. June 2, 1971.]

#### Art. 4494s. Parking Stations Near Hospitals in Counties of 900,000 or More

Counties of 900,000; Power to Construct and Operate Parking Station; Lease of Station

Sec. 1. Any Hospital District located in a county which had a population in excess of 900,000 according to the most recent Federal Census, upon a finding by the Commissioners Court of the county in which such Hospital District is located that it is to the best interest of the Hospital District and its inhabitants, shall have the power to construct, enlarge, furnish, equip and operate a parking station or stations in the vicinity of any hospital within such Districts. Any such Hospital District is further authorized from time to time to lease said parking stations to a person or corpora-

tion on such terms as the Commissioners Court of such Hospital District shall deem appropriate.

**Definitions**

Sec. 2. As used in this law,

“Parking Station” means a lot or area or surface or subsurface structure for the parking of automotive vehicles, together with equipment used in connection with the maintenance and operation thereof, and the site therefor;

“Bond Order” means the order authorizing the issuance of revenue bonds;

“Trust Indenture” means the indenture pledging revenues to secure the revenue bonds issued by any such Hospital District;

“Trustee” means the trustee under the Trust Indenture.

**Revenue Bonds; Pledge of Revenues**

Sec. 3. The Commissioners Court of the county in which any such Hospital District is located may issue negotiable revenue bonds on behalf of any such Hospital District to provide funds for the construction, enlargement, furnishing or equipping said parking stations. Such bonds shall be payable from and secured by a pledge of the net revenues to be derived from the operation of such parking stations and any other revenue resulting from the ownership of such parking station properties including rentals received from leasing all or part of said parking stations.

**Order Authorizing Bonds; Maturity; Interest Cost**

Sec. 4. The bonds shall be authorized by order adopted by a majority vote of a quorum of such Commissioners Courts, on behalf of such Hospital Districts (without the prerequisite of an election) and shall be signed by the County Judge, countersigned by the County Clerk and registered by the County Treasurer. The seal of the Commissioners Court authorizing such bonds shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by such Commissioners Court to be the most advantageous reasonably obtainable, provided that the interest cost to the Hospital District, including the discount, if any, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum, and within the discretion of such Commissioners Court, may be made callable prior to maturity at such times and prices as may be prescribed in the order authorizing the bonds.

**Bonds Constituting Junior Liens on Net Revenues; Parity Bonds**

Sec. 5. Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the Bond Order or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Order or Trust Indenture.

**Setting aside Money for Interest and Operating Expenses**

Sec. 6. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by such Commissioners Court to be required for operating expenses until the parking station or stations become sufficiently operative, may be set aside out of the proceeds from the sale of the bonds.

**Refunding Bonds**

Sec. 7. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied to the payment of outstanding bonds.

**Approval by Attorney General; Registration**

Sec. 8. Bonds issued under this Act and the record relating to their issuance shall be submitted to the Attorney General of Texas and if he finds that they have been issued in accordance with this law and constitute valid and binding special obligations of any such Hospital District and are secured as recited therein he shall approve them, and they shall be registered by the Comptroller of Public Accounts of the State of Texas who shall certify such registration thereon. Thereafter they shall be incontestable. The bonds shall be negotiable and shall contain the following provision:

“The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation.”

**Rentals or Rates for Services; Procedures for Operation of Stations**

Sec. 9. It shall be the duty of any such Hospital District to charge sufficient rentals or rates for services rendered by the parking stations so that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the parking stations, to pay the principal of and interest on the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Order or Trust Indenture. The Bond Order or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the parking stations shall be operated.

[Acts 1965, 59th Leg., p. 613, ch. 304.]

**CHAPTER SIX. MEDICINE**

**Article**

- 4495. Medical Board.
- 4496. Organization and Meetings.
- 4497. Board Shall Keep Register.
- 4498. Physicians to Register.
- 4498.1 Physicians to Register.
- 4498a. Registration of Practitioners and Interns; Fees.
- 4498b. Expiration Dates of Licenses; Proration of Fees.
- 4498c. State Rural Medical Education Board.
- 4499. Medical Register.
- 4499.1 Medical Register; Penalty.
- 4499a. Loss or Destruction of License; Duplicate License.
- 4500. Reciprocal Arrangements.

## Article

- 4500a. Foreign Nations, Reciprocal Arrangements With.
- 4501. Examination.
- 4501a. False Statement by Applicant; Penalty.
- 4502. Disposition of Fees; Compensation of Members of Board.
- 4503. Details of Examinations.
- 4504. Construction of This Law.
- 4504a. Exceptions.
- 4505. May Refuse to Admit Certain Persons.
- 4505a. Soliciting Patients; Penalty.
- 4505b. Advertising.
- 4505c. Witness Shall Testify.
- 4506. Revocation, Cancellation or Suspension of License.
- 4507, 4508. Repealed.
- 4509. Committees; Rules and Regulations; Subpoenas and Evidence; Injunction; Hearings.
- 4509a. Certification of Certain Health Organizations.
- 4510. Who Regarded as Practicing Medicine.
- 4510a. "Practicing Medicine".
- 4510b. Unlawfully Practicing Medicine; Penalty.
- 4511. Definitions.
- 4512. Malpractice Cause for Revoking License.

**Art. 4495. Medical Board**

The Texas State Board of Medical Examiners shall consist of twelve men, learned in medicine, legal and active practitioners in the State of Texas, who shall have resided and practiced medicine in this state, under a diploma from a legal and reputable college of medicine of the school to which said practitioners shall belong, for more than three years prior to their appointment on said Board. Each of the present members of the Texas State Board of Medical Examiners shall remain in office and serve the full term of his present appointment under Article 4495, Revised Civil Statutes of 1925, as heretofore amended, or until his successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Board first appointed, his successor shall be appointed by the Governor of the State and confirmed by the Senate, and shall serve a term of six years, or until his successor shall be appointed and qualified. No member of the Texas State Board of Medical Examiners shall be a stockholder or a member of the faculty or a member of a board of trustees of any medical school. Vacancies occurring in the Board shall be filled by the Governor. The word "medicine," as used in this Article, shall have the same meaning and scope as is given to it in Article 4510, Revised Civil Statutes of 1925.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 74, ch. 49, § 1; Acts 1967, 60th Leg., p. 1762, ch. 666, § 1, eff. June 17, 1967.]

**Art. 4496. Organization and Meetings**

Each member of said board shall qualify by taking the official oath in the county of his residence. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice a year, at such times and places as the board shall deem most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as

may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this title, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics.

[Acts 1925, S.B. 84.]

**Art. 4497. Board Shall Keep Register**

The board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The Secretary of the board shall on March 1 of each year, transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted in evidence in all courts.

[Acts 1925, S.B. 84.]

**Art. 4498. Physicians to Register**

It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of every County in which he may reside, and in each and every County in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, when, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another county, as well as in each and every County in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 74, ch. 49, § 2.]

**Art. 4498.1 Physicians to Register**

It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of

every County in which he may reside, and in each and every County in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, which, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another County, as well as in each and every County in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner, or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate.

[1925 P.C.; Acts 1931, 42nd Leg., p. 74, ch. 49, § 3.]

#### Art. 4498a. Registration of Practitioners and Interns; Fees

Sec. 1. It shall be the duty of all persons now lawfully qualified to practice medicine in this State as defined in Article 4510, Revised Civil Statutes of 1925, or who shall hereafter be licensed for such practice by the Texas State Board of Medical Examiners, to be registered as such practitioners with the Texas State Board of Medical Examiners on or before the first day of January, A. D., 1932, and thereafter to register in like manner annually, on or before the first day of January of each succeeding year. Each person so registered with the Texas State Board of Medical Examiners shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee of not more than Ten Dollars (\$10), which fee shall accompany the application of every such person for such registration. Such payment shall be made to the Texas State Board of Medical Examiners. Every person so registered shall file with the Texas State Board of Medical Examiners a written application for annual registration, setting forth his full name, his age, his post office address, his place of residence, the county or counties in which his certificate entitling him to practice medicine has been registered, and the place or places where he is engaged in the practice of medicine, as well as the school of medicine to which he professes to belong and the number and date of his license certificate. All persons desiring to serve as interns or residents at hospitals in this State shall register with the Texas State Board of Medical Examiners within thirty (30) days after beginning their service as a resident or intern, and shall pay a registration fee of One Dollar (\$1) to the Texas State Board of Medical Examiners.

Upon termination of said internship or residency, notification of such termination shall be given within thirty (30) days to the Texas State Board of Medical Examiners. Registration as an intern or resident does not authorize the practice of medicine as defined by law unless the other provisions regulating the practice of medicine have been complied with.

When a licensee under this Act shall have failed to pay his annual registration fee by March 1st, it shall be the duty of the Board, acting through its Secretary, to notify such licensee at his last known address by registered mail that his annual registration fee is due and unpaid. Fifteen (15) days after date of mailing such notice, it shall be the duty of the Board, acting through its Secretary, to suspend his license for nonpayment of the annual registration fee and to notify such licensee of such suspension by registered letter addressed to his last known address. If the said registration fee is not then paid within thirty (30) days from date of such notice of suspension, the Board shall then cancel such license. Practicing medicine as defined in Article 4510, Revised Civil Statutes of Texas, without an annual registration receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing medicine without a license. After the Board shall have declared a license cancelled as provided herein, the Board may thereafter in its discretion refuse to issue a new license until such licensee has passed the regular examination for license as provided in this Act.

Upon receipt of such application, accompanied by the proper registration fee, the Texas State Board of Medical Examiners, after ascertaining, either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of medicine in this state, shall issue to the applicant an annual registration receipt, certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee, and the issuance of such receipt shall not entitle the holder thereof to lawfully practice medicine within the State of Texas, unless he has in fact been previously licensed as such practitioner by the Texas State Board of Medical Examiners, as prescribed by law, and has recorded his license certificate entitling him to practice, as issued by said Board, in the District Clerk's Office of the several counties in which the same may be required by law to be recorded, and unless his license to practice medicine is in full force and effect; and provided further, that in any prosecution for the unlawful practice of medicine as denounced in Chapter 6, Title 12, of the Penal Code of Texas, such receipt showing payment of the annual registration fee required by this Act shall not be treated as evidence that the holder thereof is lawfully entitled to practice medicine.

Sec. 2. If any person required to register as a practitioner of medicine under the provisions of Article 4498a of the Revised Civil Statutes of Texas of 1925, as amended, shall fail, neglect, or refuse to apply for and pay such annual registration fee as provided for in Article 4498a of the Revised Civil Statutes of Texas, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense. Provided, however, that if any such practitioner licensed by the Texas State Board of Medical Examiners shall have had any prosecutions filed against him when such license stood suspended, revoked or cancelled, or if any penalties have been incurred by such practitioner during such period, any reinstatement of said practitioner shall in no way abate such prosecutions or penalties.

Sec. 3. All annual registration fees collected by the Texas State Board of Medical Examiners under this Act shall be placed in the State Treasury, to the credit of a special fund to be known as the "Medical Registration Fund," and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, the fees from this Medical Registration Fund shall be expended as specified by itemized appropriation in the General Departmental Appropriation Bill, and shall be used by the Texas State Board of Medical Examiners, and under its direction, in the enforcement of the laws of this State prohibiting the unlawful practice of medicine, and in the dissemination of information to prevent the violation of such laws and to aid in the prosecution of those who violate such laws. The Texas State Board of Medical Examiners shall be authorized to employ and to compensate from such special fund employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all the laws of the State prohibiting the unlawful practice of medicine, and to carry out the other purposes for which said fund is hereby appropriated. Provided that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

In performing the duties devolved by this Act upon the Board of Medical Examiners, said Board shall act through the Secretary-Treasurer of the Board of Medical Examiners. The Secretary-Treasurer shall receive a salary to be fixed by the Legislature in its General Appropriation Bill for the performance of such duties under this Act, and shall make and file a surety bond in favor of the Texas State Board of Medical Examiners in the sum of not

less than Ten Thousand Dollars (\$10,000), conditioned that he will faithfully discharge the duties of his office. Such salary shall be paid out of said "Medical Registration Fund" and shall not be, in any way, a charge upon the general revenue of the State. The Texas State Board of Medical Examiners shall employ and provide such clerks and employees as may be necessary to assist the Secretary-Treasurer in performing his duties and in carrying out the purposes of this Act; provided, that the compensation of all persons authorized to be employed under this chapter, shall be paid only out of said "Medical Registration Fund." All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer of the State Board of Medical Examiners and upon warrants drawn by the Comptroller to be paid out of said fund.

Sec. 4. The annual registration fee shall apply to all persons licensed by the Texas State Board of Medical Examiners, whether or not they are practicing within the borders of this State.

[Acts 1931, 42nd Leg., p. 55, ch. 37, §§ 1, 3; Acts 1953, 53rd Leg., p. 1029, ch. 426, §§ 1, 12; Acts 1965, 59th Leg., p. 143, ch. 59, § 1.]

#### Art. 4498b. Expiration Dates of Licenses; Proration of Fees

The board by rule may adopt a system under which registrations expire on various dates during the year. The date for sending notice that the fee is due and payable and the date for license suspension due to nonpayment shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

[Acts 1973, 63rd Leg., p. 630, ch. 266, § 30, eff. June 11, 1973.]

#### Art. 4498c. State Rural Medical Education Board

##### Creation

Sec. 1. There is hereby established and created the State Rural Medical Education Board, which shall have the general powers and duties authorized and imposed by the provisions of this Act.

Members; Appointment; Qualifications; Terms of Office; Vacancies; Oath of Office; Commission

Sec. 2. The State Rural Medical Education Board shall consist of six (6) members, who shall be appointed by the Governor with the advice and consent of the Senate, and who shall have the following qualifications: Three (3) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years experience in the actual practice of medicine within the State of

Texas in rural areas as defined by this Act, of good professional standing and graduates of recognized medical colleges; three (3) of whose members shall consist of citizens of this State who have maintained residence for a period of not less than five (5) years in a rural area as defined by this Act.

The terms of office of members of said Board shall be for six (6) years except the terms of office of members appointed to the initial Board shall be two for two years, two for four years and two for six years. The initial appointments shall be made to insure that there shall always be an equal number of said Board members with the same term of both qualifications as described above. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. The members of the State Rural Medical Education Board shall qualify by taking a Constitutional Oath of office before an officer authorized to administer oaths with this State, and, upon presentation of such oath of office, together with a certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

#### Election of Officers; Majority Vote

Sec. 3. The Board shall meet within 30 days after the effective date of this Act and elect a Chairman, Vice Chairman, and Secretary from among its members. The vote of the majority of Board members is sufficient for passage of any business or proposal which comes before the Board.

#### Per Diem; Reimbursement for Expenses

Sec. 4. A member of the Board is not entitled to a salary for duties performed as a member of the Board. However, a member is entitled to \$25 for each day he is in attendance at meetings or hearings or on authorized business of the Board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to a reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the Executive Secretary.

#### Powers and Duties

Sec. 5. The State Rural Medical Education Board shall have the following powers and duties:

(a) The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings of the Board. In the absence of both the Chairman and the Vice-Chairman from any meeting of the Board, the members of the Board present may select one of their number to serve as Chairman for the meeting.

(b) The Board shall have regular meetings at times specified by a majority vote of the Board.

(c) The Chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least three members of the Board.

(d) A majority of the Board constitutes a quorum to transact business.

(e) To make rules and regulations for its government and that of its officers and employees; and to prescribe the duties of its officers, consultants and employees.

(f) To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes. The director shall keep the books, records and accounts of the Board and shall prepare and countersign all checks, vouchers and warrants drawn upon the funds of the Board; and the same shall be signed by the Chairman of the Board. The Director shall also be the Treasurer of the Board and shall keep and account for all funds of the Board, and shall execute and file with the Board a surety bond in the sum of \$20,000, payable to the State of Texas, and conditioned upon the faithful performance of his duties, said premium to be paid out of funds of the Board.

#### Loans, Grants or Scholarships; Applications; Purpose; Investigation and Examination; Rules and Regulations; Terms and Conditions

Sec. 6. It shall be the duty of the Board to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the Board to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the Board may propound such examination to each applicant which it deems proper, and said Board may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the Board in granting such loans and scholarships shall give preference to qualified applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The said Board shall have authority to grant to each applicant deemed by the Board to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a

medical education as herein provided for, upon such terms and conditions to be imposed by the Board as provided for in this Act. The Board shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships.

Amount and Proportioning of Loans, Grants and Scholarships; Repayment; Credit for Rural Practice; Default

Sec. 7. Applicants who are granted loans, grants or scholarships by the Board shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school in the United States, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the Board. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the Board. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with five percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the Board or this Act. If the applicant practices his profession in a rural area as defined by this Act the Board is authorized and shall credit one fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the Board. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 10% of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Contract of Applicant; Terms and Conditions; Form; Signature; Removal of Disabilities; Suits

Sec. 8. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the Board, which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the Chairman of the Board, countersigned by the Secretary, and shall be signed by

the applicant. For the purposes of this Act the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The Board is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the Board upon any such contract.

Contracts for Admission with Medical Colleges or Schools

Sec. 9. It shall be the duty of the Board to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems proper, and make such arrangements and enter into such contracts, within the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the Board, such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the Board with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the Board has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the Board.

Cancellation of Contracts

Sec. 10. The Board shall promulgate and adopt rules and regulations for the cancellation of any contract made between it and any applicant for loans or scholarships upon such cause deemed sufficient by the Board. And the Board shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

Requisition; Warrant; Payment by Treasurer out of Appropriated Funds

Sec. 11. All payments of funds or loans or scholarships hereunder shall be made by requisition of the Board signed by the Chairman and the Secretary directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

Contracts for Life Insurance

Sec. 12. The Board may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan



made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the Board during a regular meeting attended by a quorum of the total Board membership.

**Extension of Time for Beginning Repayment**

Sec. 13. The Board may extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

**Suit on Default**

Sec. 14. Upon any default as provided for herein the Board shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the Board in writing.

**Advisory Committees**

Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.

**Contracts with State and Federal Agencies, Corporations, Etc.**

Sec. 16. In achieving the goals outlined in this Act and the performance of functions assigned to it, the Board may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

**Gifts, Grants or Donations; Acceptance; Deposit; Expenditure**

Sec. 17. The Board may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education Board fund, separately accounted for, and expended in accordance with the specific purposes for which given and under such conditions as are imposed by the donor and as provided by law.

**Audit**

Sec. 18. All transactions under this Act are subject to audit by the State Auditor.

**Annual Report**

Sec. 19. The board shall make a report of the operation of the State Rural Medical Education Board to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

**Rural Areas**

Sec. 20. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 25,000.

[Acts 1973, 63rd Leg., p. 782, ch. 348, eff. June 12, 1973.]

**Art. 4499. Medical Register**

It shall be the duty of every district clerk to keep as a permanent record of his office a book of suitable size, to be known as the "Medical Register," and shall record therein all licenses to practice medicine issued by the Texas State Board of Medical Examiners which shall be presented to him for registration and all matters and things required by the preceding Article to be recorded, and shall, as required by law, make therein notation of the cancellation of licenses so registered, and of the death or removal from the county of physicians whose licenses are so registered. When the Texas State Board of Medical Examiners or any district court shall revoke, suspend or cancel the license of any person to practice medicine, the said clerk shall, if said license is registered in his county, note the revocation, suspension or cancellation of such license upon the Medical Register of such county, and shall forthwith certify to the Texas State Board of Medical Examiners, through the Secretary of such Board, under the seal of the District Court which he serves, the fact that such license is no longer registered, giving the exact date of such revocation, suspension or cancellation as received by him, and shall tax the fee for making such certificate against the Board as part of the costs of the cancellation proceedings. Each County Health Officer shall keep informed of the death or removal of all registered physicians residing in the county where he resides, and upon the death or removal of any such physician from said county, shall certify the fact of such death or removal, giving the name of the physician who has died or so removed, the date or approximate date of such death or removal, and shall date and sign such certificate and deliver the same, either in person or by registered mail, to the district clerk of such county, and such clerk shall make notation forthwith of such death or removal in said Medical Register, and notify the Secretary of the Texas State Board of Medical Examiners of such death or removal. The notation of such revocation, suspension or cancellation shall consist of writing in large, legible letters across the face of the record of such license revoked, suspended, or cancelled, the words "Cancelled this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_ by the Texas State Board of Medical Examiners, or by \_\_\_\_\_ District Court of \_\_\_\_\_ County.>"; filling in the blanks correctly so as to indicate the date of such cancellation, and such notation shall be dated and signed officially by the clerk. The notation of the death or removal of a registered physician by the district clerk shall be by noting the fact

of such death or removal upon the record of the license of the physician who has died or removed from the county, in large legible letters, the date of such notation, and the official signature of the clerk. The district clerk shall collect from each physician who presents a license for registration the sum of One Dollar (\$1) at the time such license is presented to him for registration, and that sum shall be full compensation for recording said license and making all notations in the Medical Register required by law to be so made in reference to the physician named in said license. All matters pertaining to each physician shall be kept and written upon one page of said Medical Register, and no other entry or registration shall ever be made on said page. It shall be unlawful for any district clerk to make a certified copy of any page or entry in said medical register, or any part thereof, which is not an exact copy of the entire page, or which does not include all notations regarding the revocation, suspension or cancellation of license, death or removal of the physician in question, appearing in the office of said clerk. A copy from the Medical Register pertaining to any person whose license is registered therein, certified to by the district clerk having the custody of the said Medical Register, under the seal of the Court which he serves, shall be competent evidence in all trial courts and in hearings before the Texas State Board of Medical Examiners. The certificate of a district clerk under the seal of his office certifying that the person named in said certificate is not registered as a physician in the office of the district clerk shall also be prima facie evidence in all trial courts and in hearings conducted by the Texas State Board of Medical Examiners.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 1029, ch. 426, § 2.]

#### Art. 4499.1 Medical Register; Penalty

Every district clerk shall keep as a permanent record of his office a book to be known as the "Medical Register", and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration. When the license of any one to practice medicine has been cancelled, said clerk shall, if such license is registered in his county, note such cancellation upon said book, and shall also note therein the death or removal of any licensee. Any such clerk knowingly violating any provision hereof shall be fined not exceeding fifty dollars.

[1925 P.C.]

#### Art. 4499a. Loss or Destruction of License; Duplicate License

If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the Texas State Board of Medical Examiners, on a form to be prescribed by the Board, together with his affidavit of such loss or destruction, and that he is the same person

to whom such license was issued, and other information concerning its loss or destruction as the Texas State Board of Medical Examiners shall require, and shall, upon payment of a fee of Ten Dollars (\$10) be granted a duplicate license; provided further that the same fee as set forth above for duplicate licenses shall also apply to endorsements by the Board.

[Acts 1953, 53rd Leg., p. 1029, ch. 426, § 3.]

#### Art. 4500. Reciprocal Arrangements

The Texas State Board of Medical Examiners may, in its discretion, upon payment by an applicant of a fee of One Hundred Dollars (\$100) grant a license to practice medicine to any reputable physician who is a citizen of the United States or has filed his declaration of intention to become a citizen, and who is a graduate of a reputable medical college, or who has qualified on examination for a certificate of medical qualification for a commission in the United States Army or Navy, and to licentiates of other State or Territories having requirements for medical registration and practice equal to those established by the laws of this State. Applications for license under the provisions of this Act shall be in writing, and upon a form prescribed by the Texas State Board of Medical Examiners. Said application shall be accompanied by a diploma or photograph thereof, awarded to the applicant by a reputable medical college, and in the case of an Army Officer or Naval Officer, a certified transcript, or a certificate, or license, or commission issued to the applicant by the Medical Corps of the United States Army or Navy, or by a license, or a certified copy of license to practice medicine, lawfully issued to the applicant, upon examination, by some other State or Territory of the United States; provided that the licensing board of such other State or Territory in its examination requires the same general degree of fitness required by this State and grants the same reciprocal privileges to persons licensed by the Texas State Board of Medical Examiners of this State. Said application shall also be accompanied by an affidavit made by an executive officer of the United States Army or Navy, the President or Secretary of the Board of Medical Examiners which issued the license, or by a duly constituted registration officer of the State or Territory by which the certificate or license was granted, and on which the application for medical registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, except by honorable discharge from the Medical Corps of the United States Army or Navy, and that the statement of the qualifications made in the application for medical license in Texas is true and correct. Applicants for license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the appli-

cant practiced medicine in the State or Territory from which the applicant removed, was at the time of such removal in full force and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission, and the said medical diploma were issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate, license, or authority to practice medicine in the State or Territory in which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which under the laws of the State of Texas is a felony. A reputable physician under the meaning of this Act shall be one who would be eligible for examination by the Texas State Board of Medical Examiners. A reputable medical college within the meaning of this Act shall be such as is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended. It is provided, however, that the Board may, in its discretion, grant a license to any reputable physician of another State or Territory, who graduated prior to 1907 from a medical college which at the time of his graduation required only three (3) courses of instruction of not less than six (6) months each for attainment of its diploma, or the Degree of Doctor of Medicine, and which, at the time of his graduation, was generally recognized by the medical examining boards of the States or Territories as maintaining entrance requirements and courses of instruction equal to those maintained by the then better class of medical schools of the United States; provided that the provisions of all other laws of this State are complied with, including a certificate from the State Board of Examiners in the Basic Sciences.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 352, § 1; Acts 1953, 53rd Leg., p. 1029, ch. 426, § 4.]

#### Art. 4500a. Foreign Nations, Reciprocal Arrangements With

The Board of Medical Examiners shall not, under the provisions of Article 4500, grant a license to practice medicine to any applicant whose authority to practice medicine in any other nation or country was granted by a nation or country, in which a similar law in reference to granting license to practice medicine under a reciprocal arrangement does not exist in favor of physicians of this State.

[Acts 1939, 46th Leg., p. 352, § 2.]

#### Art. 4501. Examination

All applicants for license to practice medicine in this State not otherwise licensed under the provisions of law must successfully pass an examination by the Texas State Board of Medical Examiners. The Texas State Board of Medical Examiners is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. An applicant, to be eligible for the examination, must be a citi-

zen of the United States, or have filed his declaration of intention to become a citizen, and must present satisfactory proof to the Board that he is at least twenty-one (21) years of age, of good moral character, who has completed sixty (60) semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completing same, to the University of Texas for credit on a Bachelor of Arts Degree or a Bachelor of Science Degree, and who is a graduate of a medical school or college which was approved by the Texas State Board of Medical Examiners at the time the degree of Doctor of Medicine or Doctor of Osteopathy was conferred. Application for examination must be made in writing verified by affidavit, and filed with the Texas State Board of Medical Examiners on forms prescribed by the said Board, accompanied by a fee of Fifty Dollars (\$50). All applicants shall be given due notice of the date and place of such examination; provided that the partial examinations provided for in Article 4503 of the Revised Civil Statutes of Texas shall not be disturbed by this Article. Provided further that all students regularly enrolled in medical schools whose graduates are now permitted to take the medical examination prescribed by law in this State shall upon completion of their medical college courses be permitted to take the examination prescribed herein. If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas State Board of Medical Examiners may fix, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe, upon the payment of such part of Fifty Dollars (\$50) as the Board may determine to be reasonable. In the event satisfactory grades shall be made on the subjects prescribed and taken on such re-examination, the Board may grant the applicant a license to practice medicine. The Board shall determine the credit to be given examinees on answers turned in on the subjects of complete and partial examination, and its decision thereon shall be final. Provided, however, the Secretary may issue a temporary license to practice medicine to an applicant only after he has filed his completed application, together with an additional fee of Ten Dollars (\$10), with the Secretary of the Texas State Board of Medical Examiners, and that all of the other requirements as required for a permanent license are complied with; such temporary license shall be valid only until the date of the next Board meeting, and at that date the temporary license automatically expires, and is of no further effect. If the applicant fails the examination, no further permit shall be issued until he has successfully passed the examination, or is eligible for and has been granted reciprocity.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 352, § 3; Acts 1951, 52nd Leg., p. 753, ch. 410, § 1; Acts 1953, 53rd Leg., p. 1029 ch. 426, § 5; Acts 1971, 62nd Leg., p. 2037, ch. 627, § 1 eff. June 14, 1971.]

Sections 1 to 4 of the 1971 act amended this article, arts. 4503 and 4505 and added art. 4509a, respectively. Sections 5 and 6 thereof provided:

"Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed.

"Sec. 6. In the event that any section, or part of a section, or provision of this Act shall be held unconstitutional, invalid, or inoperative, this shall not affect the remaining sections or parts of sections of this Act, but the remainder of this Act shall be given effect as if the invalid, unconstitutional, or inoperative section, or any part or section of such section or provision had not been included."

#### Art. 4501a. False Statement by Applicant; Penalty

Whoever shall make any false statement in his application for examination by the Board of Medical Examiners, or who shall make any false statement under oath to obtain a license or to secure the registration of his license to practice medicine, shall be guilty of false swearing and punished accordingly.

[1925 P.C.]

#### Art. 4502. Disposition of Fees; Compensation of Members of Board

The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of the Board, said compensation to each member of the Board to be Fifty Dollars (\$50) per day for any number of days which any such member may be active on business of the Board, whether such business consists of regular meetings, committee work for the Board, grading papers, or any other function which is a legitimate and proper function held to be necessary by the Texas State Board of Medical Examiners; provided, however, that no member of said Board shall be paid a per diem in excess of fifty (50) days of any calendar year. Said daily compensation shall be exclusive of the necessary costs of travel of any Board member, or any other expenses necessary to the performance of his duty. Provided also, that the premium on any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 1029, ch. 426, § 6; Acts 1963, 58th Leg., p. 956, ch. 381, § 1; Acts 1969, 61st Leg., p. 881, ch. 295, § 1, eff. Sept. 1, 1969.]

#### Art. 4503. Details of Examinations

All examinations for license to practice medicine shall be conducted in writing in the English language, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names, or other method of identification on examination papers by which members of the Board may be able to identify such applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on and cover those subjects general-

ly taught by medical schools, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools or colleges of medicine approved by the Board; and such examinations shall also be conducted on and cover the subject of medical jurisprudence. Upon satisfactory examination conducted as aforesaid under the rules of the Board, applicants shall be granted license to practice medicine. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board and signed by all members of the Board, or a quorum thereof. The Board may in its discretion give examination for license in two (2) parts. The first part shall include such of the required scientific branches of medicine above-named as may be prescribed by the Board. The second, or final, part of the examination shall not be given until the applicant has graduated and has received a diploma from a school or college of medicine approved by the Board as provided in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. The Board may in its discretion admit to partial examination applicants who have successfully completed the work of the first two (2) years of the college course required of licentiates. The application for partial examination must be in writing, accompanied by an affidavit made by the dean, or registrar, of a reputable medical college within the meaning of the law, showing that the applicant has successfully completed the work of the first two (2) years of said course, and by a fee of Fifteen Dollars (\$15). The Board may prescribe all other prerequisites of such applications. No license shall be granted to any applicant who has successfully passed such partial examination until all legal requirements for granting license have been complied with. All partial examinations must be conducted in the same manner and under the same rules prescribed for complete, or full, examination. The fee for second, or final, examination shall be Twenty-five Dollars (\$25).

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 352, § 4; Acts 1971, 62nd Leg., p. 2038, ch. 627, § 2, eff. June 4, 1971.]

#### Art. 4504. Construction of This Law

Nothing in this Chapter shall be so construed so as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from main-

taining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members. The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to duly licensed chiropractors, who confine their practice strictly to chiropractic as defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy, or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other states called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State not pretending to be physicians who offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 352, § 5; Acts 1949, 51st Leg., p. 160, ch. 94, § 21(a).]

#### Art. 4504a. Exceptions

Nothing in this Chapter shall be so construed as to discriminate against any particular school or system of medical practice; nor to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided further, that all those so ministering or offering to minister to the sick, or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members. The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to duly licensed chiropractors who confine their practice strictly to chiropractic as defined by Statute; nor to nurses, who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of oth-

er states called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining, or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State not pretending to be physicians who offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease.

[1925 P.C.; Acts 1939, 46th Leg., p. 352, § 9; Acts 1949, 51st Leg., p. 160, ch. 94, § 20(a).]

#### Art. 4505. May Refuse to Admit Certain Persons

The State Board of Medical Examiners may refuse to admit persons to its examinations, and to issue license to practice medicine to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony, or one which involves moral turpitude.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the lives of patients.

(4) Unprofessional or dishonorable conduct which is likely to deceive or defraud the public. Unprofessional or dishonorable conduct shall include, but shall not be limited, to the following acts:

(A) The commission of any act which is a violation of the Penal Code of Texas when such act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a Penal Code violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be sufficient for action by the Board under this section.

(B) Failure to keep complete and accurate records of purchases and disposals of drugs listed in Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code), or of narcotic drugs. A physician shall keep records of his purchases and disposals of the aforesaid drugs to include, but not limited to, date of purchase, sale or disposal of such drugs by the doctor, the name and address of the person receiving the drugs and the reason for disposing of or dispensing the drugs to such person. A failure to keep such records shall be grounds for revoking, cancelling, suspending or probating the license of any practitioner of medicine.

(C) Writing prescriptions for or dispensing to a person known to be an habitual user of narcotic drugs or dangerous drugs, or to a person who the doctor should have known was an habitual user of narcotic or dangerous drugs. This provision shall not apply to those persons being treated by the physician for their narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of such person being so treated.

(D) The writing of false or fictitious prescriptions for narcotic drugs or dangerous drugs listed in Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code).

(E) Prescribe or administer a drug or treatment which is nontherapeutic in nature or nontherapeutic in the manner such drug or treatment is administered or prescribed.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Medical Examiners for license to practice medicine.

(9) Altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of medical license, certificate, or diploma.

(10) The use of any medical license, certificate, diploma, or transcript of any such medical license, certificate, or diploma, which had been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a medical license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice medicine in this State, for the purpose of treating, or offering to treat, sick, injured, or afflicted human beings.

(13) Employing, directly or indirectly, any person whose license to practice medicine has been suspended, or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended, or any person

who has been convicted of the unlawful practice of medicine in Texas or elsewhere.

(14) Performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion.

(15) The aiding or abetting, directly or indirectly, the practice of medicine by any person not duly licensed to practice medicine by the Texas State Board of Medical Examiners.

(16) The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it. If the physician refuses to submit to the examination, the Board shall issue an order requiring the physician to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the Board shall be under Article 4506.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 352, § 6; Acts 1971, 62nd Leg., p. 2039, ch. 627, § 3, eff. June 4, 1971.]

#### Art. 4505a. Soliciting Patients; Penalty

No physician, surgeon, osteopath, masseur, optometrist, or any other person who practices medicine or the art of healing the sick or afflicted, with or without the use of medicine shall employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for securing, soliciting or drumming patients or patronage. No person shall accept or agree to accept any payment, fee or reward, or anything of value, for securing, soliciting or drumming for patients or patronage for any physician, surgeon, osteopath, masseur, optometrist, or any other person who practices medicine or the art of healing with or without medicine. Whoever violates any provision of this Article shall be fined not less than One Hundred nor more than Two Hundred Dollars for each offense. Each payment

or reward or fee or agreement to pay or accept a reward or fee shall be a separate offense.

[1925 P.C.]

#### Art. 4505b. Advertising

The preceding Article shall not be construed to prohibit the inserting in a newspaper of any advertisement of such person's business, profession and place of business, or from advertising by handbills and paying for services in distributing same.

[1925 P.C.]

#### Art. 4505c. Witness Shall Testify

No person shall be exempt from giving testimony in any proceedings for the enforcement of the second preceding article, but the testimony so given shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him.

[1925 P.C.]

#### Art. 4506. Revocation, Cancellation or Suspension of License

The Texas State Board of Medical Examiners shall have the right to cancel, revoke, or suspend the license of any practitioner of medicine upon proof of the violation of the law in any respect with regard thereto, or for any cause for which the Board shall be authorized to refuse to admit persons to its examination, as provided in Article 4505 of the Revised Civil Statutes of Texas, 1925, as amended.

Proceedings under this Article shall be begun by filing charges with the Texas State Board of Medical Examiners in writing and under oath. Said charges may be made by any person or persons. The President of the Texas State Board of Medical Examiners shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records and publications authorized or

required by the terms of this Act shall be privileged.

Any person whose license to practice medicine has been cancelled, revoked or suspended by the Board may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule, and which appeal shall be taken in any District Court of the county in which the person whose certificate of registration or license is involved, resides. Upon application, the Board may reissue a license to practice medicine to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

Provided, however, that the Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the practitioner's license be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the practitioner's license, the said hearing to rescind the probation shall be called by the President of the Texas State Board of Medical Examiners who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

[Acts 1939, 46th Leg., p. 352, § 7; Acts 1953, 53rd Leg., p. 1029, ch. 426, § 7; Acts 1967, 60th Leg., p. 1763, ch. 666, § 2, eff. June 17, 1967.]

Arts. 4507, 4508. Repealed by Acts 1953, 53rd Leg., p. 1029, ch. 426, § 8

**Art. 4509. Committees; Rules and Regulations; Subpoenas and Evidence; Injunction; Hearings**

The Texas State Board of Medical Examiners shall have the power to appoint committees from its own membership, and to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of medicine, and the enforcement of this Act. The duties of any such committees appointed from the Texas State Board of Medical Examiners membership shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to such committees, and they shall make recommendations to the Texas State Board of Medical Examiners with respect thereto. The Texas State Board of Medical Examiners shall have the power, and may delegate the said power to any committee, to issue subpoenas, and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction. The Texas State Board of Medical Examiners shall not be bound by strict rules of evidence or procedure, in the conduct of its proceedings, but the determination shall be founded on sufficient legal evidence to sustain it. The Texas State Board of Medical Examiners shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The Texas State Board of Medical Examiners shall be represented by the Attorney General and/or the County or District Attorneys of this State. Before entering any order cancelling or suspending a license to practice medicine, the Board shall hold a hearing in accordance with the procedure set out in Article 4506, Revised Civil Statutes of Texas, 1925, as amended by this Act.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 1029, ch. 426, § 9.]

**Art. 4509a. Certification of Certain Health Organizations**

The Texas State Board of Medical Examiners shall, on a form adopted by the Board and under the rules promulgated by the Board, approve and certify any health organization formed by persons licensed by the Texas State Board of Medical Examiners upon application by the said organization and presentation of satisfactory proof to the Board that such organization is:

(1) a nonprofit corporation under the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes);

(2) that the nonprofit corporation is organized for any or all of the following purposes: the carrying out of scientific

research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, and related areas; the supporting of medical education in medical schools through grants and scholarships; the improving and developing of the capabilities of individuals and institutions studying, teaching, and practicing medicine; the delivery of health care to the public; the engaging in the instruction of the general public in the area of medical science, public health, and hygiene, and related instruction useful to the individual and beneficial to the community; and

(3) that the nonprofit corporation shall be organized and incorporated by persons licensed by the Board and, provided, further, that the directors and/or trustees of such organization and their successors in office shall be persons licensed by the Board, and actively engaged in the practice of medicine.

Provided, however, that the Board may, at its discretion, refuse to approve and certify any such health organization making application to the Board if in the Board's determination, the applying nonprofit corporation is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of this Act.

[Acts 1971, 62nd Leg., p. 2041, ch. 627, § 4, eff. June 4, 1971.]

**Art. 4510. Who Regarded as Practicing Medicine**

Any person shall be regarded as practicing medicine within the meaning of this law:

(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

(2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas,<sup>1</sup> and Article 4504, Revised Civil Statutes of Texas as contained in this Act.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 160, ch. 94, § 21(b); Acts 1953, 53rd Leg., p. 1029, ch. 426, § 10.]

<sup>1</sup> See, now, article 4504a.

**Art. 4510a. "Practicing Medicine"**

Any person shall be regarded as practicing medicine within the meaning of this Chapter:

1. Who shall publicly profess to be a physician or surgeon and shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical



deformity or injury, by any system or method, or to effect cures thereof.

2. Who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas<sup>1</sup> and Article 4504, Revised Civil Statutes of Texas as contained in this Act.

[1925 P.C.; Acts 1949, 51st Leg., p. 160, ch. 94, § 20(b); Acts 1953, 53rd Leg., p. 1029, ch. 426, § 11.]

<sup>1</sup> See, now, article 4504a.

#### Art. 4510b. Unlawfully Practicing Medicine; Penalty

Any person practicing medicine in this State in violation of the preceding Articles of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense.

[1925 P.C.; Acts 1939, 46th Leg., p. 352, § 10.]

#### Art. 4511. Definitions

The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons.

[Acts 1925, S.B. 84.]

#### Art. 4512. Malpractice Cause for Revoking License

Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they used the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State.

[Acts 1925, S.B. 84.]

### CHAPTER SIX ½. ABORTION

#### Article

- 4512.1 Abortion.
- 4512.2 Furnishing the Means.
- 4512.3 Attempt at Abortion.
- 4512.4 Murder in Producing Abortion.
- 4512.5 Destroying Unborn Child.
- 4512.6 By Medical Advice.

#### Art. 4512.1 Abortion

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

[1925 P.C.]

#### Art. 4512.2 Furnishing the Means

Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

[1925 P.C.]

#### Art. 4512.3 Attempt at Abortion

If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

#### Art. 4512.4 Murder in Producing Abortion

If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

[1925 P.C.]

#### Art. 4512.5 Destroying Unborn Child

Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

[1925 P.C.]

#### Art. 4512.6 By Medical Advice

Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

[1925 P.C.]

## CHAPTER SIX A. CHIROPRACTORS

## Article

4512a-1 to 4512a-18. Unconstitutional.

4512b. Practice of Chiropractic.

## Arts. 4512a-1 to 4512a-18. Unconstitutional

These articles, derived from Acts 1943, 48th Leg. p. 627, ch. 359, regulating the practice of chiropractic were unconstitutional as being violative of Const. art. 16, § 31, as according a preference to chiropractic system of healing art by failure to require same educational qualifications of chiropractors as are required of medical practitioners by Medical Practice Act, or to require chiropractors to pass satisfactory examinations on same subjects as all others similarly situated, and prohibiting licensed medical practitioners from employing chiropractic system of treating diseases and disorders without passing examination required by Chiropractic Act. See *Ex parte Halsted* (1944) 147 Cr.R. 453, 182 S.W.2d 479.

For law covering the practice of chiropractic, see art. 4512b.

## Art. 4512b. Practice of Chiropractic

## Acts Constituting Practice of Chiropractic

Sec. 1. Any person shall be regarded as practicing chiropractic within the meaning of this Act<sup>1</sup> who shall employ objective or subjective means without the use of drugs, surgery, X-ray therapy or radium therapy, for the purpose of ascertaining the alignment of the vertebrae of the human spine, and the practice of adjusting the vertebrae to correct any subluxation or misalignment thereof, and charge therefor, directly or indirectly, money or other compensation; or who shall hold himself out to the public as a chiropractor or shall use either the term "chiropractor," "chiropractic," "doctor of chiropractic," or any derivative of any of the above in connection with his name.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

## Expenses

Sec. 2. The Texas Board of Chiropractic Examiners hereinafter provided for shall defray all expenses under this Act<sup>1</sup> from fees provided in this Act, and no appropriation shall ever be made from the State Treasury for any expenditures made necessary by this Act; and all fees remaining in the "Chiropractic Examiners Fund" at the end of any fiscal year in excess of Twenty Thousand Dollars (\$20,000) shall be transferred into the General Fund of the State of Texas.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

## Texas Board of Chiropractic Examiners Created; Personnel and Terms

Sec. 3. (a) A Board to be known as "The Texas Board of Chiropractic Examiners" is hereby created. No member of said Board shall be a member of the faculty or Board of Trustees of any chiropractic school; and all appointments to said Board shall be subject to the confirmation of the Senate. The Texas Board of Chiropractic Examiners, which hereinafter may be referred to as "The Board," shall be composed of nine (9) members whose duty it shall be to carry out the purposes and enforce the provisions of this Act,<sup>1</sup> and the Governor of Texas shall, upon the taking effect of this Act, appoint nine (9) graduate chiropractors to constitute such a Board, who shall

<sup>4</sup> West's Tex.Stats. & Codes—40

have been residents of this State, actually engaged in the practice of chiropractic as defined in this Act, for at least five (5) years immediately preceding the passage of this Act. The Board thus appointed, or a quorum thereof, shall by virtue of such appointment issue licenses to themselves. Five (5) members of the Board shall constitute a quorum. No school shall ever have a majority representation on the Board. No member of said Board shall be a stockholder, or have any financial interest whatsoever in any chiropractic school or college.

(b) The members of the Texas Board of Chiropractic Examiners shall be divided into three (3) classes, one, two and three, and their respective terms of office shall be determined by the Governor at the time of the first appointments hereunder. Three (3) members shall hold their offices for two (2) years, three (3) members four (4) years, and three (3) members six (6) years, respectively, from the time of their appointment and until their successors are duly appointed and qualified; and the members of one (1) of the above classes of said Board shall thereafter be appointed every two (2) years by the Governor to supply vacancies made by provisions of this Act who shall hold office for six (6) years and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only. After the first Board has been appointed, only licensed chiropractors under the laws of the State of Texas, actively engaged in the practice of chiropractic, shall be eligible for appointment on said Board.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

## Oath; Officers; Meetings; Rules, Regulations and By-laws; Bond of Secretary-Treasurer

Sec. 4. Each member of the Texas Board of Chiropractic Examiners shall qualify by taking the Constitutional Oath. At the first meeting of said Board after each biennial appointment, the Board shall elect a president, a vice-president and a secretary-treasurer from its members. Regular meetings shall be held to examine applicants and for the transaction of business at least twice a year at such time and place as may be determined by the Board. Due notice of such meetings shall be given by publication in such paper or journal as may be selected by the Board. Special meetings may be held on a call of three (3) members of the Board. The Board may prescribe rules, regulations and bylaws in harmony with the provisions of this Act<sup>1</sup> for its own proceedings and government for the examination of applicants for license to practice chiropractic. The secretary-treasurer shall make and file a surety bond in favor of the Texas Board of Chiropractic Examiners in the sum of not less than Five Thousand Dollars (\$5,000) conditioned that he will faithfully discharge the duties of his office.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

Committees of Board; Duties; Rules and Regulations

Sec. 4a. The Texas Board of Chiropractic Examiners shall have the power to appoint committees from its own membership, and to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of this Act.

The duties of any such committees appointed from the Texas Board of Chiropractic Examiners membership shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to such committees, and they shall make recommendations to the Texas Board of Chiropractic Examiners with respect thereto.

Procedure and Hearings; Injunction Against Violations; Cancellation of License

Sec. 4b. The Texas Board of Chiropractic Examiners shall have the power, and may delegate the said power to any committee, to issue subpoenas, and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction. The Texas Board of Chiropractic Examiners shall not be bound by strict rules of evidence or procedure, in the conduct of its proceedings and hearings, but the determination shall be founded on sufficient legal evidence to sustain it. The Texas Board of Chiropractic Examiners shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

Before entering any order cancelling or suspending a license to practice chiropractic, the Board shall hold a hearing in accordance with the procedure set out in Article 4512b, Section 14, Vernon's Revised Civil Statutes of Texas, as amended.

Records

Sec. 5. The Board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place, and duration of residence of each applicant, the time spent in the study of chiropractic in respective chiropractic schools, together with such other information as the Board may desire to record. Said register shall also show whether applicants were rejected or licensed and shall be prima-facie evidence of all matters contained therein. The secretary of the Board shall on May 1st of each year transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said Board or the Secretary of State, shall be admitted in evidence in all courts.

Registration of Certificate

Sec. 6. It shall be unlawful for anyone to practice chiropractic within the limits of this

State who has not registered in the district clerk's office of the county in which he may reside and in each and every county in which he may maintain an office or may designate as a place for practicing chiropractic, the certificate evidencing his right to practice chiropractic as issued to him by the Texas Board of Chiropractic Examiners. The holder of every such certificate must have the same recorded upon each change of residence to another county, as well as in each and every county in which he may maintain an office, or in which he may designate a place for practicing chiropractic; and the absence of such a record in any place where such record is hereby required shall be prima-facie evidence of the want of possession of such certificate.

Chiropractic Register; Certificate of Non-registration

Sec. 7. Every district clerk shall keep as a permanent record in his office a book of suitable size, to be known as the "Chiropractic Register," and shall record therein all licenses to practice chiropractic issued by the Texas Board of Chiropractic Examiners which shall be presented to him for registration, and all the matter and things required by the preceding Section to be recorded, and shall as required by law, make therein notation of the cancellation of licenses so registered, and of the death and removal from the county of chiropractors whose licenses are so registered. When any District Court shall cancel the license of any person to practice chiropractic, the clerk of said court shall, if said license is registered in his county, note the cancellation of said license upon the Chiropractic Register of said county and shall forthwith certify to the secretary of the Texas Board of Chiropractic Examiners, under the seal of said court, the fact that said license was so cancelled by said court, giving the exact date of said cancellation, and shall tax the fee for making said certificate as part of the costs of the suit to cancel said license. The notation of such cancellation shall consist of writing in large, legible letters across the face of the record of the license cancelled the words "Cancelled by the District Court of \_\_\_\_\_ County on the day of \_\_\_\_\_, \_\_\_\_\_" (filling in the blanks so as to correctly indicate the name of the county and the date of the cancellation), and such notation shall be dated and signed officially by the clerk. When any chiropractor shall die or remove from the county, it shall be the duty of the district clerk to note the fact of such death or removal upon the record of the license of such chiropractor who has died or removed from the county, in large, legible letters, the date of said notation and the official signature of the clerk. The district clerk shall collect from each chiropractor who presents a license for registration the sum of One Dollar (\$1) at the time such license is presented to him for registration, and that sum shall be full compensation for recording said license and making all notations in the chiropractic register required by law to be so made in reference to

the chiropractor named in said license. All matters pertaining to each chiropractor shall be kept and written upon one page of said chiropractic register, and no other entry or registration shall ever be made on said page. It shall be unlawful for any district clerk to make a certified copy of any page or entry in said chiropractic register, or any part thereof, which is not an exact copy of the entire page, or which does not include all notations regarding the cancellation of license, death, or removal of the chiropractor in question, appearing in the office of said clerk. A copy from the chiropractic register pertaining to any person whose license is registered therein, certified to by the district clerk having the custody of such chiropractic register, under the seal of said court, shall be competent evidence in all trial courts. The certificate of a district clerk under the seal of his office, certifying that the person named in said certificate is not registered as a chiropractor in the office of said district clerk, shall also be prima facie evidence in all trial courts.

**Registration With Board; Fee**

Sec. 8. It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as such practitioner with the Texas Board of Chiropractic Examiners on or before the first day of January A.D. 1950, or thereafter registered in like manner annually as provided by this Act on or before the first day of January each year to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereafter provided for, a fee fixed by the Texas Board of Chiropractic Examiners not to exceed Twenty-five Dollars (\$25), which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post office address, his place of residence, the county or counties in which his certificate entitling him to practice chiropractic has been registered, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate. Upon receipt of such application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying

that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee and the issuance of such receipt shall not entitle the holder thereof to lawfully practice chiropractic within the State of Texas unless he has, in fact, been previously licensed as such chiropractor by the Texas Board of Chiropractic Examiners, as prescribed by law, and has recorded his license certificate entitling him to practice, as issued by said Board, in the district clerk's office of the several counties in which same may be required by law to be recorded, and unless his license to practice chiropractic is in full force and effect; and providing further that, in any prosecution for the unlawful practice of chiropractic as denounced in Section 6 hereof, such receipt showing payment of the annual registration fee required by this Section shall not be treated as evidence that the holder thereof is lawfully entitled to practice chiropractic.

**Notice of Nonpayment of Annual Registration Fee; Suspension of License; New License**

Sec. 8a. When a licensee under this Act shall have failed to pay his annual registration fee by January 1st, it shall be the duty of the Board, acting through its Secretary, to notify such licensee at his last known address by registered mail that his annual registration fee is due and unpaid. Fifteen (15) days after date of mailing such notice, it shall be the duty of the Board, acting through its Secretary, to suspend his license for nonpayment of the annual registration fee and to notify such licensee of such suspension by registered mail addressed to his last known address. If the said registration fee is not then paid within thirty (30) days from date of such notice of suspension, the Board shall then cancel such license. Practicing chiropractic as defined in Section 1 of this Act without an annual registration receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing chiropractic without a license. After the Board shall have declared a license cancelled as provided herein the Board may thereafter in its discretion refuse to issue a new license until such licensee has passed the regular examination for license as provided in this Act.

**Application of Act and Registration Provisions; Prerequisites to Annual Registration or Renewal**

Sec. 8b. The provisions of this Act shall apply to all persons licensed by the Texas Board of Chiropractic Examiners and the annual registration fee shall apply to all persons licensed by the Texas Board of Chiropractic Examiners, whether or not they are practicing within the borders of this State. Provided, however, that as a prerequisite to the annual registration or renewal and before such chiropractic registration or renewal may be issued, the licensee shall present to the Board (a) satisfactory evidence that in the year preceding the application for renewal said licensee at-

tended two (2) days of seminar, educational lectures, post-graduate course, or annual convention of any State Association or Society, or regular organized (recognized) Chiropractic College, or (b) satisfactory evidence that he was unavoidably prevented by sickness or otherwise attending such educational or post-graduate program, together with a recommendation of two (2) reputable licensed Texas Chiropractors who personally know the licensee and vouch for his good standing in the profession; provided that new licensees during twelve (12) months immediately preceding said January 1st, by examination, shall be granted renewal without attending said educational programs.

#### Expiration Dates of Registration; Proration of Fees

Sec. 8c. The Board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

#### License to Practitioners of Other States or Territories

Sec. 9. The Texas Board of Chiropractic Examiners shall upon payment by an applicant of a fee of Fifty Dollars (\$50), grant license to practice chiropractic to licentiates of other states or territories having requirements and practices equal to those established by the laws of this State. Applications for license under the provisions of this Section shall be in writing, and upon a form to be prescribed by the Texas Board of Chiropractic Examiners. Said application shall be accompanied by a license, or a certified copy of license to practice chiropractic, lawfully issued to the applicant, upon examination, by some other state or territory of the United States. Said application shall also be accompanied by an affidavit made by the president or secretary of the Board of Chiropractic Examiners which issued the said license, or by a legally constituted chiropractic registration officer of the state or territory by which the license was granted, and on which the application for chiropractic registration in Texas is based, reciting that the accompanying license has not been cancelled or revoked, and that the statement or qualifications made in the application for chiropractic license in Texas is true and correct. Applicants for license under the provisions of this Section shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license under which the applicant practiced chiropractic in the State or territory from which the applicant removed, was at the time of such removal in full force, and not suspended or cancelled. Said application shall also state that the applicant is the identical person to whom the said certificate was issued, and

that no proceeding has been instituted against the applicant for the cancellation of said certificate to practice chiropractic in the State or territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which, under the law of Texas is a felony.

#### Examination of Applicants for License; Persons Practicing or Beginning Study Before Date of Act

Sec. 10. All applicants for license to practice chiropractic in this State, not otherwise licensed under the provisions of this law, must successfully pass an examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. All applicants shall be eligible for examination who are citizens of the United States and present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, and have at least graduated from a first grade high school or who have such equivalent preliminary education as would permit them to matriculate in The University of Texas, and are graduates of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee of Twenty-five Dollars (\$25). All applicants shall be given due notice of the date and place of such examination.

The Board may grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a personal interview and a practical examination and has paid an additional fee of Fifty Dollars (\$50).

If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe except that the applicant shall not be required to take a re-examination on subjects in which he has made a

grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year upon the payment of such part of Twenty-five Dollars (\$25) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

Provided, however, that those who are regularly engaged in the practice of chiropractic in this State on April 18, 1949, and who have completed a resident course and hold diplomas from schools recognized by the Board as being regularly organized and conducted as chiropractic schools at the time of the issuance of such diplomas, shall be licensed under this Act, provided they apply therefor within six (6) months after the effective date of this Act, and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character; and

Provided that those who have begun the study of chiropractic prior to the effective date of this Act in institutions regularly organized and conducted as chiropractic schools shall be licensed under this Act, provided they complete a standard chiropractic resident course of one hundred and twenty (120) semester hours in such school or schools and receive diplomas therefrom; and provided further that they shall meet the provisions of this Act with reference to citizenship, age, and good moral character.

#### Examiners Fund

Sec. 11. The funds realized from the fees collected under this Act<sup>1</sup> shall constitute the "Chiropractic Examiners Fund," and shall be applied to the necessary expenses of the Texas Board of Chiropractic Examiners, including the expenses authorized by said Board in enforcing the provision of this Act and to compensate members of the Board, said compensation to each member of the Board to be Twenty-five Dollars (\$25) per day for the days such members may be active on business of the Board, whether such business consists of regular meetings, committee work for the Board, grading of papers, traveling, or any other function which is a legitimate and proper function held to be necessary by the Texas Board of Chiropractic Examiners.

Said daily compensation shall be exclusive of the necessary costs of travel of any Board member, or any other expenses necessary to the performance of his duty; provided also that the premium of any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties.

All disbursements from said fund shall be made only upon written approval of the Presi-

dent and Secretary-Treasurer of the Texas Board of Chiropractic Examiners upon warrants drawn by the Comptroller to be paid out of said fund.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Conduct of Examinations; Subjects

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent (75%) with not less than sixty per cent (60%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

#### Rights of Physicians and Surgeons

Sec. 13. Nothing in this Act<sup>1</sup> shall limit or affect the rights and powers of physicians and surgeons, duly qualified and registered as such under the laws of this State, to practice medicine as that term may now or hereafter be defined by law.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Cancellation, Revocation or Suspension of License; Probation; Procedure; Appeal

Sec. 14. The Texas Board of Chiropractic Examiners shall have the right to cancel, revoke, or suspend the license of any practitioner of chiropractic or place licenses<sup>1</sup> upon probation for such length of time as may be deemed proper by the Board upon proof of the violation of the law in any respect with regard thereto, or for any cause for which the Board shall be authorized to refuse to admit persons to its examinations.

Proceedings under this Article shall be begun by filing charges with the Texas Board of Chiropractic Examiners in writing and under oath. Said charges may be made by any person or persons. The President of the Texas Board of Chiropractic Examiners shall set a time and place for hearing and shall cause a copy of the charges, together with a notice of

the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records and publications authorized or required by the terms of this Act shall be privileged.

Any person whose license to practice chiropractic has been cancelled, revoked or suspended by the Board may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notices to the Board. The proceeding on appeal shall be a trial de novo, as such term is commonly used and intended in an appeal from the justice court to the county court, and which appeal shall be taken in any District Court of the county in which the person whose certificate of annual renewal or license is involved, resides. Upon application, the Board may reissue a license to practice chiropractic to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

<sup>1</sup> So in enrolled bill. Probably should be "licensee".

#### Grounds for Refusing, Revoking or Suspending License

Sec. 14a. The Texas Board of Chiropractic Examiners may refuse to admit persons to its examinations and may cancel, revoke or suspend licenses or place licensees upon probation for such length of time as may be deemed proper by the Board for any one or more of the following causes:

1. For failure to comply with, or the violation of, any of the provisions of this Act;
2. If it is found that said person or persons do not possess or no longer possess a good moral character or are in any way guilty of deception or fraud in the practice of chiropractic;
3. The presentation to the Board or use of any license, certificate or diploma,

which was illegally or fraudulently obtained, or the presentation to the Board of any untrue statement or any document or testimony which was illegally practiced in passing the examination;

4. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or the procuring or assisting in the procuring of an abortion;

5. Grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public, habits of intemperance or drug addiction, or other habits calculated in the opinion of the Board to endanger the lives of patients;

6. The use of any advertising statement of a character to mislead or deceive the public;

7. Employing directly or indirectly any person whose license to practice chiropractic has been suspended, or associate in the practice of chiropractic with any person or persons whose license to practice chiropractic has been suspended, or any person who has been convicted of the unlawful practice of chiropractic in Texas or elsewhere;

8. The advertising of professional superiority, or the advertising of the performance of professional services in a superior manner;

9. The purchase, sale, barter, use, or any offer to purchase, sell, barter or use, any chiropractic degree, license, certificate, or diploma, or transcript of license, certificate, or diploma in or incident to an application to the Board of Chiropractic Examiners for license to practice chiropractic;

10. Altering with fraudulent intent any chiropractic license, certificate or diploma, or transcript of chiropractic license, certificate or diploma;

11. The impersonation of, or acting as proxy for, another in any examination required by this Act for a chiropractic license;

12. The impersonation of a licensed practitioner, or the permitting or allowing another to use his license or certificate to practice chiropractic as defined by statute by a licensed practitioner;

13. Proof of insanity of the holder of a certificate, as adjudged by the regularly constituted authorities;

14. Failure to use proper diligence in the practice of chiropractic by the holder of a certificate, or grossly inefficient practice of chiropractic;

15. Advertising specific methods of practice, or advertising as a graduate of any specific school except in opening announcements and then only in biographical layout;

16. Naming functional disorders of the human body in advertisements in the absence of relating same to the practice of chiropractic as authorized in Section 1 of this Act;

17. Advertising in any publication or news media the prices for which chiropractic services are available; and the advertising of free services shall be deemed to be in violation of this Act, except under the auspices of chiropractic organizations recognized by the Texas Board of Chiropractic Examiners;

18. Advertising in or through any media as a chiropractic specialist except as follows:

A. "Specializing in spinal alignment";

B. "Specializing in the examination and adjustment of spinal disorders";

19. Advertising in yellow pages of telephone directories with ads in excess of two inches by one column except institutional advertising under the auspices of a chiropractic organization recognized by the Texas Board of Chiropractic Examiners;

20. Failing to clearly differentiate a chiropractic office or clinic from any other business or enterprise; or

21. Personally soliciting patients, or causing patients to be solicited, by the use of case histories of patients of other chiropractors.

#### Reinstatement of License

Sec. 14b. (a) In order for a license to be reinstated, an applicant for reinstatement shall be required to complete at least a one-week period of attendance at a chiropractic school or college recognized by the Texas Board of Chiropractic Examiners, for each year or fraction thereof that the license was suspended, revoked, or cancelled for any reason.

(b) The Board may further require evidence of proper training, precaution, and safety in the use of analytical and diagnostic x-ray in conformity with the provisions of Chapter 72, Acts of the 57th Legislature, 1961 (Article 4590f, Vernon's Texas Civil Statutes), and in conformity with all rules and regulations of the Texas Radiation Control Agency and the Texas State Department of Health. Nothing herein shall be deemed to alter, modify or amend the provisions of Section 1, Chapter 94, Acts of the 51st Legislature, 1949, as amended (Article 4512b, Vernon's Texas Civil Statutes), or to enlarge in any manner the scope of the practice of chiropractic or the acts which a chiropractor is authorized to perform; and, provided further, that nothing herein shall be deemed to alter, modify or amend the provisions of Article 4510, Revised Civil Statutes of Texas, 1925, as amended.

#### Powers of District Court; Duty of District and County Attorneys

Sec. 15. The District Courts of this State shall have the right to revoke, cancel, or suspend the license of any practitioner of chiropractic upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Chiropractic Examiners shall be authorized to refuse to admit persons to its examination, as provided in Section 14 thereof, and it shall be the duty of the several District and County Attorneys of this State to file and prosecute appropriate judicial proceedings for such revocation, cancellation, or suspension in the name of the State, on request of the Texas Board of Chiropractic Examiners.

#### Procedure in Judicial Proceedings

Sec. 16. All judicial proceedings which shall be instituted by any District or County Attorney under the provisions of the last preceding Section of this Act shall be in writing, shall state the ground thereof, and shall be signed officially by the prosecuting officer instituting the same. Citation thereon shall be issued in the name of the State of Texas in the manner and form as in other cases, and the same shall be served upon the defendant and such defendant shall be required to answer within the time and manner provided by law in civil cases. If the said practitioner of chiropractic shall be found guilty, or shall fail to appear and deny the charge, after being cited as aforesaid, the said court shall, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely, and shall give proper judgment for costs.

#### Proceedings by Attorney General

Sec. 17. Upon the application of the Texas Board of Chiropractic Examiners, or a majority thereof, to the Attorney General setting forth that the County or District Attorney of a county or district has failed to prosecute or proceed against any person violating the terms of this Act,<sup>1</sup> setting forth that application and request have been made of such County or District Attorney and that such request or application has been neglected or refused the Attorney General shall proceed against such person in the county of residence of the person complained against, either by civil or criminal proceedings.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Injunctions

Sec. 18. The actual practice of chiropractic in violation of the provisions of this Act<sup>1</sup> shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction of the party sought to be enjoined of violation of any provision of this Act. In such suits for injunction, it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or about to be so unlawfully practicing chiropractic in this State may be made a party defendant in



said suit. The Attorney General, the District Attorney of the district in which the defendant resides, the County Attorney of the county in which the defendant resides, or any of them, shall have the authority, and it shall be their duty, and the duty of each of them, to represent the State in such suits. No injunction, either temporary or permanent, shall be granted by any court, until after a hearing of the complaint is had by a court of competent jurisdiction on its merits. In such suit no injunction or restraining order shall be issued until final trial and final judgment on the merits of the suit. If on the final trial it be shown that the defendant in such suit has been unlawfully practicing chiropractic or is about to practice chiropractic unlawfully, the court shall by judgment perpetually enjoin the defendant from practicing chiropractic in violation of law as complained of in said suit. Disobedience of said injunction shall subject the defendant to penalties, provided by law for the violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution. Such causes shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as other suits for injunction.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Punishment for Violations

Sec. 19. Whoever violates any provision of this Act<sup>1</sup> shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than thirty (30) days.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

Sec. 20. [Amends Arts. 4504a, 4510a.]

Sec. 21. [Amends Arts. 4504, 4510].

#### Seal of Board

Sec. 22. The seal of the Board created by this Act<sup>1</sup> shall consist of a star of five points with the words, "The State of Texas," and the words, "Texas Board of Chiropractic Examiners," around the margin thereof.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Repeal

Sec. 23. All laws and parts of laws in conflict with the provisions of this Act<sup>1</sup> be and the same are hereby repealed, only to the extent of any conflict.

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

#### Partial Invalidity

Sec. 24. If any of the provisions of this Act,<sup>1</sup> or any Section or part thereof, shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the constitutionality or validity of any other provision, Section or part of this Act, and it is the legislative intent that all of the

remaining parts of this Act should remain in full force and effect in spite of any invalidity of any provision, Section or part thereof; and the Legislature would have passed all other provisions, Sections and parts thereof regardless of the invalidity of any other provision, Section or part thereof of this Act.

[Acts 1949, 51st Leg., p. 160, ch. 94; Acts 1957, 55th Leg., p. 360, ch. 168, §§ 1 to 4; Acts 1967, 60th Leg., p. 110, ch. 55, § 1, eff. April 17, 1967; Acts 1971, 62nd Leg., p. 1349, ch. 357, §§ 1, 2, eff. May 25, 1971; Acts 1973, 63rd Leg., p. 210, ch. 94, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 623, ch. 266, § 1, eff. June 11, 1973.]

<sup>1</sup> This article and arts. 4504, 4504a, 4510 and 4510a.

## CHAPTER SIX B. PSYCHOLOGY

### Art. 4512c. Psychologists' Certification and Licensing Act

#### Short Title

Sec. 1. This Act may be known and cited as the "Psychologists' Certification and Licensing Act."

#### Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(a) "Board" means the Texas State Board of Examiners of Psychologists provided for by this Act.

(b) A person represents himself to be a "psychologist" within the meaning of this Act when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologists," or "psychology," or offers to render or renders services to individuals, corporations, or the public for compensation.

(c) The term "psychological services," means acts or behaviors coming within the purview of the practice of psychology.

#### Practice of Medicine Not Authorized

Sec. 3. Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state.

#### State Board of Examiners; Members; Appointment and Terms; Termination; Oath

Sec. 4. The Texas State Board of Examiners of Psychologists shall consist of six qualified persons appointed by the governor with the advice and consent of the senate, for regular terms of six years. The terms of members who are in office on October 31, 1971, shall terminate on that date, and the terms of their successors shall commence on November 1, 1971. However, each member shall continue to hold office until his successor is appointed and has qualified. On or before November 1, 1971, the governor shall appoint two members for two years, two members for four years, and two members for six years. Thereafter, at the expiration of the term of each member, the governor shall appoint a successor for a term of six years. In making an appointment the governor shall specify which member each new

appointee succeeds. Before entering upon the duties of his office, each member of the Board shall take the constitutional oath of office and file it with the secretary of state.

#### Qualifications of Board Members; Terms; Vacancies

Sec. 5. Each member of the Board shall be a citizen of the United States, a resident of this state and certified as a psychologist under this Act, who has engaged in independent practice, teaching, or research in psychology for a period of at least five years. To assure adequate representation of the diverse fields of psychology, the governor shall so make his appointments that the Board has at least two members who are engaged in rendering services in psychology, at least one member who is engaged in research in psychology, and at least one member who is a member of the faculty of a training institution in psychology. A member of the Board who is appointed for a term of less than six years may be appointed to succeed himself for one six-year term. A member of the Board who is appointed for a six-year term is ineligible for reappointment for a period of six years following expiration of the term. Any vacancy in the membership of the Board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment by the governor.

#### Compensation and Expenses of Board Members

Sec. 6. Each member of the Board shall receive the sum of Twenty Dollars (\$20.00) per day for each day he is actually engaged in the duties of his office, including time spent in necessary travel, together with all necessary expenses incurred in the performance of his duties under this Act. All per diem and reimbursement for expense authorized by this section shall be paid from the "Psychologists Licensing Fund." No money shall ever be paid from the General Revenue Fund for the administration of this Act.

#### Organization and Meetings of the Board

Sec. 7. The Board shall hold a regular annual meeting at which it shall select from its members a Chairman and a Vice-Chairman. Other regular meetings shall be held at such times as the rules of the Board may provide but not less than two times a year. Special meetings may be held at such times as may be deemed necessary or advisable by the Board or a majority of its members. Reasonable notice of all meetings shall be given in the manner prescribed by the rules of the Board. A quorum of the Board shall consist of a majority of its members. The Secretary of the Board shall be appointed by the Board and shall hold office at the pleasure of the Board. The Secretary may or may not be a member of the Board. The Board may employ such other persons as it deems necessary or desirable to carry out the provisions of this Act. The Board shall adopt and have an official seal.

#### Rules of the Board

Sec. 8. In addition to the powers and duties granted the Board by other provisions of this Act, the Board may make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. The Board shall adopt and publish a Code of Ethics.

#### Receipts and Disbursements

Sec. 9. The Secretary of the Board shall receive the account for all monies derived under this Act. He shall pay these monies weekly to the State Treasurer who shall keep them in a separate fund to be known as the "Psychologists Licensing Fund." Monies may be paid out of this fund only by warrant drawn by the State Comptroller upon the State Treasurer, upon itemized voucher, approved by the Chairman of the Board and attested by the Secretary of the Board. There shall be an annual audit of the Psychologists Licensing Fund by the Auditor of the State of Texas. The Secretary of the Board shall give a surety bond for the faithful performance of his duties to the governor in the sum of Ten Thousand Dollars (\$10,000.00) or an amount recommended by the State Auditor. The premium for this bond shall be paid out of the Psychologists Licensing Fund. The Board may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this Act.

#### Annual Report of the Board

Sec. 10. As soon as practicable after the close of each fiscal year, the Board shall submit a report to the governor and the presiding officer of each House of the Legislature concerning the work of the Board during the preceding fiscal year.

#### Qualification of Applicant for Examination for Certification

Sec. 11. An applicant is qualified to take the examination for certification as a psychologist:

- (a) if he has received the doctoral degree based upon a program of studies whose content was primarily psychological from an accredited educational institution or its substantial equivalent in both subject matter and extent of training, and if he has had no less than two years of satisfactory supervised experience in rendering psychological services, one of which is subsequent to the granting of the doctoral degree,
- (b) if he is at least twenty-one years of age,
- (c) if he is a resident of this state,
- (d) if he is of good moral character, and
- (e) if he is a citizen of the United States or has legally declared his intention of becoming a citizen.

**Application**

Sec. 12. Application for examination for certifications as a psychologist or for certification without examination as a psychologist shall be upon the forms prescribed by the Board. The Board may require that the application be verified. The certification fee shall accompany the application.

**Evaluation of Experience**

Sec. 13. In determining the acceptability of the applicant's professional experience, the Board may require such documentary evidence of the quality, scope and nature of the applicants' experience as it deems necessary.

**Examinations**

Sec. 14. The Board shall administer examinations to qualified applicants for certification at least once a year. The Board shall determine the subject and scope of the examinations. Written examinations may be supplemented by such oral examinations as the Board shall determine. An applicant who fails his examination may be re-examined at a subsequent examination upon payment of another certification fee. The Board may waive the examination requirement for Diplomats of the American Board of Examiners in Professional Psychology and/or when in the Board's judgment the applicant has already demonstrated competence in areas covered by the examination.

**Certification**

Sec. 15. (a) A qualified applicant for certification who has successfully passed the examination prescribed by the Board and has paid the certification fee shall be certified by the Board as a psychologist.

(b) Until December 31, 1970 a person who is at least twenty-one years of age, a resident of this state, of good moral character, and is a citizen of the United States or has legally declared his intention of becoming a citizen may, upon application and payment of the certification fee, be certified without examination by the Board as a psychologist if

(1) he has a doctor's degree from an accredited institution based upon a program which is primarily psychological or the substantial equivalent thereof in both subject and extent of training, and, in addition, has had three years of professional experience satisfactory to the Board, or

(2) has a master's degree from an accredited institution based upon a program which is primarily psychological and, in addition, has had eight years of professional psychological experience.

(c) The Board may, upon application therefor and payment of the certification fee, certify as a psychologist any person who is licensed or certified as a psychologist by any other state, territory or possession of the United States if the requirements of that state, territory or possession for such license or certifi-

cate are the substantial equivalent of the requirements of this Act.

**Fees**

Sec. 16. The certification fee, the licensing fee, and the renewal fees shall be an amount fixed by the Board. The Board shall fix the amount of the fees so that the total fees collected will be sufficient to meet the expenses of administering this Act and so that unnecessary surpluses in the Psychologists Licensing Fund are avoided.

**Certification—Expiration—Renewal**

Sec. 17. (a) The Board shall issue a certificate to each person whom it registers as a psychologist. The certificate shall show the full name of the psychologist and his address and shall bear a serial number. The certificate shall be signed by the Chairman and the Secretary of the Board under the seal of the Board.

(b) Certificates will be renewed no less than once every two years. Certificates expire on December 31st in the appropriate year following their issuance or renewal and are invalid thereafter unless renewed.

(c) The Board shall notify every person certified under this Act of the date of expiration of his certificate and the amount of the renewal fee. This notice shall be mailed at least one month before the expiration of the certificate. Renewal may be made at any time during the months of November or December upon application therefor by payment of the renewal fee. Failure on the part of any person certified to pay his renewal fee before January 1 does not deprive him of his right to renew his certificate, but the fee to be paid for renewal after December shall be increased ten per cent for each month or fraction thereof that the payment of the renewal fee is delayed. However, the maximum fee for delayed renewal shall not exceed twice the normal renewal fee. A psychologist who wishes to place his certificate upon an inactive status may do so upon application by payment of a fee of Three Dollars (\$3.00); such a psychologist shall not accrue any penalty for late payment of the renewal fee.

**Expiration Dates of Certifications; Proration of Fees**

Sec. 17A. The board by rule may adopt a system under which certifications expire on various dates during the year. For the year in which the certification expiration date is changed, certification fees payable before January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which certification is valid. On renewal of the certification on the new expiration date, the total certification renewal fee is payable.

**Roster of Certified and Licensed Psychologists**

Sec. 18. During the month of April of each year, the Board shall publish a list of all psychologists certified or licensed under this Act. The list shall contain the name and address of

the psychologist and such other information that the Board deems desirable. The list shall be arranged both alphabetically and geographically. The Board shall mail a copy of this list to each person licensed under this Act, shall place a copy on file with the Secretary of State and shall furnish copies to the public upon request.

#### Sub-doctoral Certification

Sec. 19. The Board shall set standards for qualification and issue certificates of qualification for sub-doctoral levels of psychological personnel. Sub-doctoral personnel must have a master's degree in a program that is primarily psychological in nature in an accredited university or college. Sub-doctoral levels shall be designated by a title(s) which includes the adjective "psychological" followed by a noun such as "associate," "assistant," "examiner," "technician," etc.

#### Representation as Psychologist Prohibited

Sec. 20. After December 31, 1970, no person shall represent himself as a psychologist within the meaning of this Act unless he is certified and registered under the provisions of this Act.

#### Licensing

Sec. 21. Any person certified as a psychologist by the Board who offers psychological services as defined herein for compensation, must apply to the Board and upon payment of a fee shall be granted a license by the Board.

#### Exemptions

Sec. 22. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist by any federal, state, county or municipal agency, medical clinic organized as an unincorporated association, or research laboratories and business corporations provided such employees are performing those duties for which they are employed by such organizations and within the confines of such organizations, or a duly chartered and accredited educational or charitable institution insofar as such activities and services are a part of the duties of his office or position as a psychologist with such agency or institution; except that persons employed as psychologists who offer or provide psychological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pur-

suing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of a person who performs psychological services under the direct supervision of a licensed psychologist for whose activities and services the licensed psychologist assumes full responsibility if the person has received the doctoral degree or master's degree based upon a program of studies whose content was primarily psychological from an accredited educational institution, or its substantial equivalent in both subject matter and extent of training;

(d) the activities and services of a person who is not a resident of this state and who has no established offices in this state in rendering consulting or other psychological service when these activities and services are rendered for a period which does not exceed in the aggregate more than thirty days during any year if the person is authorized under the laws of the state or country of his residence to perform these activities and services;

(e) a sociologist who holds a doctoral degree in sociology or social psychology awarded by a recognized institution of higher learning and who elects to represent himself to the public by the title "social psychologist," provided that he has notified the Board of his intention to represent himself as such;

(f) the activities and services of qualified members of other professional groups such as physicians, attorneys, school counselors, social workers, Christian Scientist practitioners who are duly recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or duly ordained religions from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions, provided that they do not represent themselves by any title or in any manner prohibited by this Act.

#### Revocation, Cancellation or Suspension of License or Certification

Sec. 23. The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke or suspend the license or certification of any psychologist upon proof that the psychologist:

(a) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any of-

fense which if committed within this state would constitute a felony under the laws of this state; or

(b) is or has had the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effect; or

(c) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(d) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(e) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(f) for any cause for which the Board shall be authorized to refuse to admit persons to its examination.

Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners of Psychologists in writing and under oath. Said charges may be made by any person or persons. The Chairman of the Board shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged.

Any person whose license or certification has been cancelled, revoked or suspended by the Board may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule, and which appeal shall be taken in any District Court of the county in which the person whose certificate of registration or license is involved resides. Upon application, the Board may recertify the applicant or reissue a license to a person whose license has been cancelled or sus-

pending, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation and shall be made in such manner and form as the Board may require.

Provided, however, that the Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

#### Injunctions

Sec. 24. The Texas State Board of Examiners of Psychologists shall have the right to institute an action in its own name to enjoin the violation of any provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Texas State Board of Examiners of Psychologists shall be represented by the Attorney General and/or the County or District Attorneys of this state.

#### Violations

Sec. 25. Any person who, after December 31, 1970, represents himself to be a psychologist within this state without being certified or licensed or exempted in accordance with the provisions of this Act is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in county jail for not

more than thirty (30) days. Each day of violation is a separate offense.

#### Appropriation

Sec. 26. For the biennium ending August 31, 1971, the monies received in the Psychologists Licensing Fund are hereby appropriated to the Board to be expended by it in the administration of this Act. The salaries paid to persons employed by the Board shall be comparable to those prescribed in the General Appropriations Act for persons holding comparable positions. To the extent applicable, the general rules of the General Appropriations Act shall apply to the expenditure of funds under this appropriation.

#### Severability Clause

Sec. 27. If any provision of this Act or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1969, 61st Leg., p. 2059, ch. 713, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 676, ch. 62, §§ 1, 2, eff. April 20, 1971; Acts 1973, 63rd Leg., p. 623, ch. 266, § 2, eff. June 11, 1973.]

### CHAPTER SIX C. ATHLETIC TRAINERS

#### Art. 4512d. Board of Athletic Trainers; Licensing; Procedures

##### Definitions

Sec. 1. In this Act:

(1) "Athletic Trainer" means a person with specific qualifications, as set forth in Section 9 of this Act, who, upon the advice and consent of his team physician carries out the practice of prevention and/or physical rehabilitation of injuries incurred by athletes. To carry out these functions the Athletic trainer is authorized to use physical modalities such as heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment.

(2) "Board" means the Texas Board of Athletic Trainers.

(3) Nothing herein shall be construed to authorize the practice of medicine by any person not licensed by the Texas State Board of Medical Examiners.

(4) The provisions of this act do not apply to physicians licensed by the Texas State Board of Medical Examiners; to dentists, duly qualified and registered under the laws of this state, who confine their practice strictly to dentistry; nor to licensed optometrists, who confine their practice strictly to optometry as defined by statute; nor to occupational therapists, who confine their practice to occupational therapy; nor to nurses who practice nursing only; nor to duly licensed chiropodists or podiatrists, who confine their practice

strictly to chiropody or podiatry as defined by statute; nor to physical therapists who confine their practice to physical therapy; nor to masseurs or masseuses in their particular sphere of labor; nor to commissioned or contract physicians or physical therapists or physical therapists assistants in the United States Army, Navy, Air Force, Public Health and Marine Health Service.

##### Texas Board of Athletic Trainers

Sec. 2. (a) The Texas Board of Athletic Trainers, composed of three members, is created. To qualify as a member, a person must be a citizen of the United States and a resident of Texas for five years immediately preceding appointment. Two members must be licensed athletic trainers, except for the initial appointees, and one member must be a physician licensed by the state.

(b) The members of the board shall be appointed by the governor with the advice and consent of the Senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on January 31 of odd-numbered years. In making the initial appointments, the governor shall designate one member for a term expiring in 1973, one member for a term expiring in 1975, and one member for a term expiring in 1977.

(c) Each appointee to the board shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

##### Board Organization and Meetings

Sec. 3. (a) The board shall elect from its members for a term of one year, a chairman, vice chairman, and secretary-treasurer, and may appoint such committees as it considers necessary to carry out its duties.

(b) The board shall meet at least twice a year. Additional meetings may be held on the call of the chairman or at the written request of any two members of the board.

(c) The quorum required for any meeting of the board is two members. No action by the board or its members has any effect unless a quorum of the board is present.

##### Records

Sec. 4. (a) The board shall keep a record of its proceedings in a book for that purpose.

(b) The board shall keep a complete record of all licensed athletic trainers and shall annually prepare a roster showing the names and addresses of all licensed athletic trainers. A copy of the roster shall be made available to any person requesting it on payment of a fee

established by the board as sufficient to cover the costs of the roster.

#### Powers and Duties of the Board

Sec. 5. (a) The board may make rules and regulations consistent with this Act which are necessary for the performance of its duties.

(b) The board shall prescribe application forms for license applicants.

(c) The board shall establish guidelines for athletic trainers in the state and prepare and conduct an examination for applicants for a license.

(d) The board may employ an executive secretary and other persons necessary to carry out the provisions of this Act. The executive secretary shall have such duties and responsibilities as the board may determine.

(e) The board shall adopt an official seal and the form of a license certificate of suitable design. The board shall have suitable office space to administer the provisions of this Act and keep permanent records.

(f) Before entering on the discharge of the duties of his office, the secretary-treasurer of the board must give bond for the performance of his duty in an amount determined by the board. The premium on the bond shall be paid from any available funds of the board.

(g) The secretary-treasurer of the board shall remit, on or before the 10th day of each month, to the state treasurer all of the fees collected by the board during the preceding month for deposit in the general revenue fund.

(h) The board may authorize all necessary disbursements to carry out the provisions of this Act, including the premium on the bond of the secretary-treasurer, stationery expenses, equipment, and facilities necessary to carry out the provisions of this Act.

(i) The board may issue subpoenas to compel witnesses to testify or produce evidence in a proceeding to deny, revoke, or suspend a license.

#### Compensation

Sec. 6. The compensation and travel expense allowance for members of the board and its employees shall be provided in the General Appropriations Act.

#### Fees

Sec. 7. The fees are:

- (1) an athletic trainer examination fee of \$20 for each examination taken;
- (2) an athletic trainer license fee of \$25; and
- (3) an athletic trainer annual license renewal fee of \$10.

#### Prohibited Acts

Sec. 8. No person may hold himself out as an athletic trainer or perform, for compensation, any of the activities of an athletic trainer as defined in this Act without first obtaining a license under this Act.

#### Qualifications

Sec. 9. An applicant for an athletic trainer license must possess one of the following qualifications:

(1) have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation; or

(2) hold a degree in physical therapy or corrective therapy with at least a minor in physical education or health which included a basic athletic training course, hold a valid teaching certificate for the State of Texas, and have spent at least two academic years working under the direct supervision of a licensed athletic trainer; or

(3) have completed at least four years beyond the secondary school level, as an undergraduate or graduate student, as an apprentice athletic trainer under the direct supervision of a licensed athletic trainer. These must be consecutive years of supervision, military duty excepted.

(4) An out-of-state applicant must fulfill one of the above stated qualifications, (1), (2), or (3), and submit proof of active engagement as an athletic trainer in the State of Texas as set forth in Section 16(b) of this Act.

#### Issuance of License

Sec. 10. (a) An applicant for an athletic trainer license must submit an application to the board on forms prescribed by the board and submit the examination fee required by this Act.

(b) The applicant is entitled to an athletic trainer license if he possesses the qualifications enumerated in Section 9 of this Act, satisfactorily completes the examination administered by the board, pays the license fee as set in Section 7 of this Act, and has not committed an act which constitutes grounds for denial of a license under Section 12 of this Act.

#### License Renewal

Sec. 11. A license issued pursuant to this Act expires one year from the date of issuance. Licenses shall be renewed according to procedures established by the board and payment of the renewal fee as set in Section 7 of this Act.

#### Expiration Dates of Licenses; Proration of fees

Sec. 11A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

Grounds for Denial, Suspension, or  
Revocation of License

Sec. 12. The board may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee if he has:

- (1) been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction; or
- (2) secure the license by fraud or deceit; or
- (3) violated or conspired to violate the provisions of this Act or rules and regulations issued pursuant to this Act.

Procedures for Denial, Suspension, or  
Revocation of a License

Sec. 13. (a) Any person whose application for a license is denied is entitled to a hearing before the board if he submits a written request to the board.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the board in writing and under oath. The charges may be made by any person or persons.

(c) The board shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for hearing, to be served on the applicant requesting the hearing or licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail to the last known address of the licensee or applicant.

(d) At the hearing the applicant or licensee has the right to appear either personally or by counsel, or both, to produce witnesses, and to have subpoenas issued by the board and to cross-examine the opposing or adverse witnesses.

(e) The board is not bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(f) The board shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the board shall be mailed to the applicant or licensee at his last known address by certified mail.

(g) On application, the board may reissue a license to a person whose license has been cancelled or revoked, but the application may not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and the application shall be made in the manner and form as the board may require.

Procedures for Appeal

Sec. 14. (a) A person whose application for a license has been refused or whose license

has been cancelled, revoked, or suspended by the board may take an appeal, within 20 days after the order is entered, to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under the provisions of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

Penalties

Sec. 15. Any person who violates a provision of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

Issuance of Licenses on the Effective Date of This Act

Sec. 16. (a) Any person actively engaged as an athletic trainer on the effective date of this Act shall be issued a license if he submits proof of five years' experience as an athletic trainer within the preceding 10-year period, and pays the license fee required by this Act.

(b) For the purposes of this section a person is actively engaged as an athletic trainer if he is employed on a salary basis by an educational institution, professional athletic organization, or other bona fide athletic organization for the duration of the institution's school year, or the length of the athletic organization's season, and, performs the duties of athletic trainer as the major responsibility of his employment.

Effective Date

Sec. 17. Section 8 of this Act becomes effective on January 1, 1972. The remainder of this Act becomes effective on September 1, 1971.

[Acts 1971, 62nd Leg., p. 1722, ch. 498, eff. Sept. 1, 1971, § 8, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 623, ch. 266, § 3, eff. June 11, 1973.]

## CHAPTER SIX D. PHYSICAL THERAPY

### Art. 4512e. Board of Physical Therapy Examiners; Licensing; Procedures

Definitions

Sec. 1. (a) "Physical therapy" means the care of any bodily condition of any person by the use of heat, light, water, electricity, and physical massage, manipulations, and active, passive, and resistive exercise. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used herein, and a license issued hereunder shall not authorize the diagnosis of disease or the practice of medicine. "Physical therapy" shall also include evaluating the patient by performing tests and/or measurements of neuromuscular, sensorimotor, musculoskeletal, cardiovascular, and respiratory functions



as an aid to treatment; planning and implementing initial and subsequent treatment programs on the basis of approved tests findings; delegating selective forms of treatment to supportive personnel with assumption of the responsibilities for the care of the patient and the continuing direction and supervision of the supportive personnel and the providing of consultative services for health, education and community agencies. The term "physical therapy" as defined herein shall not include or authorize the employment of objective or subjective means without the use of drugs, surgery, x-ray therapy, or radium therapy for the purpose of ascertaining the alignment of the vertebra of the human spine or the practice of adjusting the vertebra of the human spine to correct any subluxation or misalignment thereof.

(b) "Physical therapist," "physiotherapist," or "physical therapy technician" means a person who practices physical therapy. "Hydrotherapist," "massage therapist," "mechanotherapist," "functional therapist," "physical therapy practitioner," "physical therapy specialist," "physio-therapy practitioner" are equivalent terms; any derivation of the above or any letters implying the above or equivalent terms or any reference to any one of them in this Act includes the others, but does not include certified corrective therapists or adapted or corrective physical education specialists.

(c) "Physical therapist assistant" means a person who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy but do not require professional education in the physiological, anatomical, biological, physical, and clinical sciences involved in the practice of physical therapy, but does not include certified corrective therapists or adapted or corrective physical education specialists.

(d) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by the physical therapist, but does not mean certified corrective therapists or adapted or corrective physical education specialists.

(e) "Board" means the "Texas Board of Physical Therapy Examiners."

#### Creation of the Texas Board of Physical Therapy Examiners

Sec. 2. (a) There is hereby created a Texas Board of Physical Therapy Examiners. The board shall consist of nine members appointed by the Governor with the advice and consent of the Senate for terms of six years. The initial appointments shall be made so that three members serve until January 31, 1973, three members serve until January 31, 1975, and three members serve until January 31, 1977. Thereafter members shall serve terms of six years.

(b) The members of the board must be qualified for licensure under Section 8 of this Act and hold a certificate from the physical therapy curriculum of The University of Texas or an

equivalent physical therapy curriculum. Members must be residents of this State and practitioners of physical therapy for five years immediately preceding appointment.

(c) Vacancies on the board shall be filled by appointment of the Governor with the advice and consent of the Senate, for the remainder of the term.

(d) The board may appoint an executive secretary-treasurer at an annual salary as determined by legislative appropriation.

(e) No member of the board shall be liable to civil action for any act performed in good faith in the execution of his duties in this capacity.

#### Powers and Duties of the Board

Sec. 3. (a) It shall be the duty of the board to examine applicants for licenses at least once a year at such reasonable places and times as shall be designated by the board in its discretion.

(b) The board may employ additional employees, including licensed physical therapists to aid in administering examinations.

(c) The examination shall embrace the following subjects: anatomy, pathology, physiology, psychology, physics, electrotherapy, radiation therapy, hydrotherapy, massage therapy, exercises, physical therapy as applied to medicine, neurology, orthopedics, psychiatry, and technical procedures in the practice of physical therapy.

(d) The board shall have the power to issue, suspend, and revoke licenses and issue subpoenas.

(e) The board may adopt rules and regulations consistent with this Act to carry out its duties in administering this Act.

#### Organization

Sec. 4. (a) The members of the board shall, upon appointment, elect from their number a chairman, secretary-treasurer, and other officers required for the conduct of business. Special meetings of the board shall be called by the chairman and secretary-treasurer, acting jointly, or on the written request of any two members. The board may make such by-laws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this Act.

(b) The secretary-treasurer shall keep a record of each meeting of the board, and a register containing the names of all physical therapists licensed pursuant to this Act, which shall be at all times open to public inspection. On March 1 of each year the secretary-treasurer shall transmit an official copy of the list of the licensees to the Secretary of State for permanent record, a certified copy of which shall be admissible as evidence in any court of this State.

(c) The board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this Act.

#### Compensation and Bond

Sec. 5. (a) The members of the board shall receive a per diem fixed by the board, not to exceed \$30 per day for each day they are actually engaged in the work of the board. The members shall be reimbursed for all actual and necessary expenses incurred in the performance of the duties required by this Act.

(b) The secretary-treasurer of the board shall, within 30 days of his appointment by the board, execute a bond in the sum of \$10,000 payable to the board, conditioned upon his faithful performance of the duties of his office and accounting of all funds coming into his hands as secretary-treasurer. The bond shall be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this State, and shall be approved by the chairman of the board.

#### Exemptions

Sec. 6. The provisions of this Act do not apply to physicians licensed by the Texas State Board of Medical Examiners, to dentists duly qualified and registered under the laws of this State who confine their practice strictly to dentistry; nor to licensed optometrists who confine their practice strictly to optometry as defined by statute; nor to duly licensed chiropractors who confine their practice strictly to chiropractic as defined by statute; nor to occupational therapists who confine their practice to occupational therapy; nor to certified corrective therapists who confine their practice to corrective therapy, exercise, and adapted physical education; nor to Registered Nurses or Licensed Vocational Nurses who are licensed under the laws of this State and who confine their practice to nursing only; nor to licensed chiropodists or podiatrists, who confine their practice strictly to chiropody or podiatry as defined by statute; nor to masseurs or masseuses in their particular sphere of labor; nor to athletic trainers who under the supervision of a licensed physician carry out the practice of prevention or physical rehabilitation of injuries incurred in athletics; nor to employees of athletic clubs, employees or operators of health clubs, employees or operators of gymnasiums in their particular spheres of labor so long as their activity is nonmedical and nontherapeutic in purpose and so long as their activity does not constitute the diagnosis or treatment of physical disease or defect; nor to salesmen or demonstrators of physical therapy equipment when engaged in selling such equipment; nor to any person employed by any agency, bureau or division of the Government of the United States while performing the duties of his employment; nor to an employee performing services under the direct supervision of a physician in a hospital licensed under Chapter 223, Acts of the 56th Legislature, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes); nor to legally qualified physical therapists of other states called in for consultation but who have no office in Texas and appoint no place in this State for seeing, evaluat-

ing, or treating persons; nor to students enrolled in an educational program approved by the board.

Nothing in this Act shall be construed to authorize the practice of optometry, including vision therapy, hand-eye coordination exercises, visual training, and developmental vision therapy by any person not licensed by the Texas Optometry Board.

#### Prohibited Acts

Sec. 7. (a) No person may practice, or hold himself out as able to practice, physical therapy, or act or hold himself out as being a physical therapist unless he has first received a license under this Act.

(b) No person shall act or hold himself out as being a physical therapist assistant unless he has first received a license under this Act.

(c) A license is not required for a physical therapy aide.

#### Physical Therapist License

Sec. 8. (a) An applicant for a license as a physical therapist shall file a written application on forms provided by the board together with an examination fee of \$5. The applicant shall present evidence satisfactory to the board that he is of good moral character and that he has completed an accredited curriculum in physical therapy education which has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and:

(1) has completed a minimum of 60 academic semester credits or its equivalent from a recognized college which semester hour credits are acceptable for transfer to The University of Texas, including courses in the biological, social, and physical sciences; or

(2) has received a diploma from an accredited school of professional nursing.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of this section, has paid a \$25 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

#### Physical Therapist Assistant License

Sec. 9. (a) An applicant for a physical therapist assistant license shall file a written application with the board on forms provided by the board together with an examination fee of \$5. The applicant shall present evidence that he is of good moral character and has completed a program of at least two years duration offered by a college accredited by a recognized accrediting agency including elementary or intermediate courses in the anatomical, biological, physical sciences, and clinical procedures as prescribed and approved by the board.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications set out in Subsection (a) of

this section, pays a \$15 license fee, and has not committed an act which constitutes grounds for denial of a license under Section 19 of this Act.

#### Reciprocal Licenses

Sec. 10. A person who is licensed or otherwise registered as a physical therapist or as a physical therapist assistant by another state, the District of Columbia, or a territory of the United States whose requirements for licensure or registration were at the date of licensing or registration substantially equal to the requirements set forth in this Act, may receive a physical therapist license or physical therapist assistant license without examination upon submission of an application on forms prescribed by the board and payment of a \$30 reciprocal license fee.

#### Temporary Licenses

Sec. 11. (a) The board shall issue a temporary license without examination to a physical therapist or physical therapist assistant who meets the qualifications set out in Sections 8 and 9 of this Act upon submission of a written application prescribed by the board, proof that the applicant is in this State on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project, and payment of a \$20 physical therapist temporary license fee or a \$12.50 physical therapist assistant temporary license fee. This license expires one year from the date of issue.

(b) The board shall issue a temporary license to a person who has applied for a license and meets the qualifications under the provisions of Sections 8 or 9 of this Act. This license expires upon completion of the next administered examination whether or not the applicant passes the examination.

#### Professional Title

Sec. 12. A licensed physical therapist may use the title "Licensed Physical Therapist." No other person may be so designated or permitted to use the term "Licensed Physical Therapist." The license as a physical therapist does not authorize the use of the prefix, "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

#### Reexamination

Sec. 13. (a) Any applicant who fails to pass an examination given by the board may take another examination in the subjects in which he failed without payment of an additional examination fee, but must be so reexamined not less than six months nor more than 12 months after the unsuccessful examination.

(b) Upon failure of an applicant to pass a second examination the board may require him to complete additional courses of study designated by the board, in which case the applicant shall be required to present to the board satisfactory evidence of having completed the required additional courses before taking another

examination and shall pay an additional fee equal to the fee required for filing the original application.

#### Display of License

Sec. 14. Each licensee shall display his license and renewal certificate in a conspicuous place in the principal office where he practices physical therapy.

#### Renewal of Unexpired Licenses

Sec. 15. (a) All licenses issued under this Act except temporary licenses expire one year from the date of issue.

(b) A renewal license shall be issued upon submission of an application form prescribed by the board and payment of the renewal fee as set out in this Act prior to the expiration date of the license.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 15A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license renewal date is changed, license fees payable on the date of issue shall be prorated on a monthly basis so that the licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

#### Renewal of an Expired License

Sec. 16. (a) A license which has expired for less than five years from the date of application for renewal may be renewed by submission of an application form prescribed by the board, payment of a \$2 fee for each year the license was expired without renewal, and payment of a \$5 restoration fee.

(b) A license which has expired for more than five years may be reinstated only by complying with the requirements and procedures for issuing the original license.

#### License Renewal Fees

Sec. 17. The renewal fees for licenses issued under this Act shall be established by the board according to the following schedule:

- (1) physical therapist license—not to exceed \$20; and
- (2) physical therapist assistant—not to exceed \$12.50.

#### Penalties

Sec. 18. (a) Any person who violates a provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for not more than 60 days, or both.

(b) Each day of violation constitutes a separate offense.

(c) Any person who knowingly makes a false statement in his application for a license under this Act or in response to an inquiry of the board is guilty of a misdemeanor and upon

conviction is punishable by a fine of not less than \$200 nor more than \$500, or imprisonment in the county jail for not less than 60 days nor more than one year, or both.

**Grounds for Denial, Suspension, or  
Revocation of a License**

Sec. 19. A license may be denied, or after hearing, suspended or revoked if the applicant or licensee has:

(1) practiced physical therapy other than upon the referral of a physician licensed to practice medicine by the Texas State Board of Medical Examiners or the Texas State Board of Dental Examiners in this State, or a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners; or, in the case of practice as a physical therapist assistant, has practiced other than under the direction of a registered licensed physical therapist;

(2) used drugs or intoxicating liquors to an extent which affects his professional competency;

(3) been convicted for violating any municipal, State or federal narcotic law;

(4) been convicted of a felony or of a crime involving moral turpitude;

(5) obtained or attempted to obtain a license by fraud or deception;

(6) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;

(7) been adjudged mentally incompetent by a court of competent jurisdiction;

(8) been guilty of conduct unbecoming a person licensed as a physical therapist or a physical therapist assistant or of conduct detrimental to the best interest of the public;

(9) been guilty of soliciting patients, advertising, or any form of self-aggrandizement.

**Procedures for Denial, Suspension, or  
Revocation of a License**

Sec. 20. (a) Any person whose application for a license is denied is entitled to a hearing before the board if he submits a written request to the board.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the board in writing and under oath. The charges may be made by any person or persons.

(c) The board shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges and notice of hearing may be given by certified mail to the last known address of the licensee or applicant.

(d) At the hearing the applicant or licensee has the right to appear either personally or by counsel, or both, to produce witnesses, and to have subpoenas issued by the board and to cross-examine opposing or adverse witnesses.

(e) The board is not bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(f) The board shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the board shall be mailed to the applicant or licensee at his last known address by certified mail.

(g) On application, the board may reissue a license to a person whose license has been cancelled or revoked, but the application may not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and the application shall be made in the manner and form as the board may require.

**Procedures for Appeal**

Sec. 21. (a) A person whose application for a license has been refused or whose license has been cancelled, revoked, or suspended by the board may take an appeal, within 20 days after the order is entered, to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under the provisions of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this State. Appeal from the judgment of the district court lies as in other civil cases.

**Fees**

Sec. 22. All fees received by the board under this Act shall be deposited in the State Treasury to the credit of the general revenue fund.

**Issuance of Licenses on the Effective Date of Act**

Sec. 23. (a) On the effective date of this Act, any person who is practicing physical therapy or engaged as a physical therapist assistant in this State shall be issued a license without examination upon application to the board, proof that he meets the qualifications for license set out in Section 8 or 9 of this Act, and payment of a \$30 license fee. Applications for a license under this subsection must be made within 90 days from the effective date of this Act.

(b) On the effective date of this Act, any person who is practicing physical therapy or engaged as a physical therapist assistant for at least five years but does not meet the qualifications set out in Section 8 or 9 of this Act, may be issued a license upon submission of an application on forms prescribed by the board, successful completion of a written examination

administered by the board, and payment of a \$30 license fee. Applications for a license under this subsection must be made within 90 days from the effective date of this Act.

**Effective Date**

Sec. 24. This Act is effective September 1, 1971, except Section 7 which is effective January 1, 1972.

**Severability**

Sec. 25. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2542, ch. 836, eff. Sept. 1, 1971; § 7, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 624, ch. 266, § 4, eff. June 11, 1973.]

## CHAPTER SEVEN. NURSES

**Article**

- 4513. Board of Examiners.
- 4514. Organization of Board.
- 4515. Per Diem, Salary, Travel and Other Expenses.
- 4516. Educational Secretary.
- 4517. Executive Secretary and Bonds.
- 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board of Nurse Examiners and Requirement of Registration.
- 4518a. Repealed.
- 4519. Examination and Fee.
- 4520. Exempt from Examination.
- 4521. Certificate from Another State.
- 4522. Use of Title "R.N."; Registration Bureaus.
- 4523. Temporary Permit.
- 4524. Recording Certificate.
- 4525. Disciplinary Proceedings.
- 4526. Re-registration.
- 4526a. Expiration Dates of Registrations; Proration of Fees.
- 4527. Fees.
- 4527a. Prohibited Practices.
- 4527b. Penalty.
- 4527-1. Fees to be Charged by Board of Examiners.
- 4528. Exceptions.
- 4528a. Employment for Public Schools and Compensation.
- 4528b. Tuberculosis Nurses.
- 4528c. Licensed Vocational Nurses.
- 4528d. Repealed.

### Art. 4513. Board of Examiners

The Governor shall biennially appoint a Board of Nurse Examiners to consist of six members, and the term of office of those so appointed shall be two for six years; two for four years; and two for two years. The terms of office for members of the Board shall expire on January 31 of odd-numbered years. Each member of said Board shall be a registered nurse at least twenty-five years of age, of good moral character and a graduate of an accredited school of professional nursing, and three members shall have at least three years' teaching experience in educational work among

nurses. One of the two persons appointed every two years shall be a person with at least three years' teaching experience in education work among nurses. The members of the Board, the Executive Secretary, and the Educational Secretary shall each make and subscribe to the official oath, and the same shall, within thirty days after their appointment, be filed with the Secretary of State.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 261, ch. 115, § 1; Acts 1931, 42nd Leg., p. 35, ch. 28, § 1; Acts 1969, 61st Leg., p. 1566, ch. 475, § 1, eff. June 10, 1969.]

### Art. 4514. Organization of Board

The members of the board shall elect from their number a president and a treasurer. Special meetings of said board shall be called by the president acting upon the written request of any two members. The board may make such by-laws and rules as may be necessary to govern its proceedings and to carry in to effect the purpose of this law. The executive secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 261, ch. 115, § 2; Acts 1969, 61st Leg., p. 1566, ch. 475, § 2, eff. June 10, 1969.]

### Art. 4515. Per Diem, Salary, Travel and Other Expenses

The members of the board shall receive such per diem as may be fixed by the board, not to exceed \$25 per day for each day they are actually engaged in the work of the board, and the board may defray all necessary travel and other expenses incurred by its members and personnel in carrying out the work of the board. The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1566, ch. 475, § 3, eff. June 10, 1969.]

### Art. 4516. Educational Secretary

The board shall appoint an educational secretary, who shall be at least thirty years old, and who shall have had at least five years teaching experience in educational work among nurses. The duties of said secretary shall be determined by the board.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 261, ch. 115, § 3; Acts 1969, 61st Leg., p. 1566, ch. 475, § 4, eff. June 10, 1969.]

### Art. 4517. Executive Secretary and Bonds

The board shall employ a qualified executive secretary, who shall not be a member of the board. Under the direction of the board, the executive secretary shall perform duties required by this Act and duties designated by the board. Also, the board shall employ all other

persons necessary to carry on the work of the board. The executive secretary and the treasurer shall upon their employment and election, respectively, execute a bond in the sum of One Thousand Dollars payable to the Governor. The bonds are conditioned that the executive secretary and treasurer shall faithfully perform the duties of their respective offices and shall account for funds coming into their hands as executive secretary and treasurer. Each bond shall be signed by two or more sufficient sureties or by a surety company authorized to do business in this state and approved by the president of the board.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1566, ch. 475, § 5, eff. June 10, 1969.]

**Art. 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board of Nurse Examiners and Requirement of Registration**

Sec. 1. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) calendar years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

Sec. 2. No person shall be certified as a graduate of any school of nursing or educational program unless such person has completed the requirements of the prescribed course of study, including clinical practice, of an accredited school of nursing or educational program.

Sec. 3. Every applicant for registration under this law shall present to the Board of Nurse Examiners evidence of successful completion of an accredited program of professional nursing education and a sworn application accompanied by such proof as may be required by the Board showing that the applicant is of good moral character and has such basic educational and other preliminary qualifications and requirements as the Board may prescribe, and shall upon payment of required fees be entitled to take the examination prescribed by the Board, and upon making the passing grade of seventy percent (70%) shall be entitled to receive from said Board a certificate signed by the members of said Board, attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas.

Sec. 4. Any person practicing or offering to practice professional nursing in this state for compensation, shall hereafter be required to submit evidence to the Board of Nurse Examiners that he or she is qualified to practice and shall be registered as provided by this law.

Sec. 5. "Professional Nursing" shall be defined for the purposes of this Act as the performance for compensation of any nursing act (a) in the observation, care and counsel of the ill, injured or infirm; (b) in the maintenance of health or prevention of illness of others; (c) in the administration of medications or treatments as prescribed by a licensed physician or dentist; (d) in the supervision or teaching of nursing, insofar as any of the above acts require substantial specialized judgment and skill and insofar as the proper performance of any of the above acts is based upon knowledge and application of the principles of biological, physical and social science as acquired by a completed course in an approved school of professional nursing. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures.

Sec. 6. Nothing in this chapter permits the practice of medicine as defined by the Acts of 1907, page 224, being Article 4510, Revised Civil Statutes of Texas, 1925, as amended by Chapter 94, Acts of the 51st Legislature, Regular Session, 1949; Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953; and nothing in this chapter shall be construed to amend, modify, or repeal Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951, known as Article 4528c, Revised Civil Statutes of Texas, 1925, as amended by Chapter 28, Acts of the 53rd Legislature, First Called Session, 1954; Chapter 47, Acts of the 55th Legislature, Regular Session, 1957, and Chapter 449, Acts of the 55th Legislature, Regular Session, 1957.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 157, ch. 67, § 1; Acts 1959, 56th Leg., p. 107, ch. 56, § 1; Acts 1967, 60th Leg., p. 1759, ch. 665, § 1, eff. Jan. 1, 1968; Acts 1969, 61st Leg., p. 1566, ch. 475, § 6, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1571, ch. 476, § 1, eff. June 10, 1969.]

**Art. 4518a. Repealed by Acts 1959, 56th Leg. p. 107, ch. 56, § 2**

**Art. 4519. Examination and Fee**

Upon filing application for examination each applicant shall pay an examination fee of fifteen dollars which shall in no case be returned to applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right to stand a second examination on those subjects wherein he or she has failed to make a grade of seventy per cent without payment of any additional fees. If more than three examinations are necessary, an additional fee of two dollars shall be charged for each. A grade of not less than seventy on any one subject shall be required to pass the examination. The examination shall be of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and executive secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1566, ch. 475, § 7, eff. June 10, 1969.]

**Art. 4520. Exempt from Examination**

No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law, but shall register with the county clerk in the county where she then resides.

[Acts 1925, S.B. 84.]

**Art. 4521. Certificate from Another State**

Any applicant who holds a registration certificate as a registered nurse from another state, district, territory or possession of the United States, or from a foreign country, may be issued a license to practice as a registered nurse in the State of Texas by endorsement and without examination upon the payment of a fee of Twenty Dollars (\$20.), provided in the opinion of the Board of Nurse Examiners such other board issuing such other certificate in its examination required the same general degree of fitness required by this state.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 455, ch. 226, § 1, eff. May 25, 1961; Acts 1969, 61st Leg., p. 1566, ch. 475, § 8, eff. June 10, 1969.]

**Art. 4522. Use of Title "R.N."; Registration Bureaus**

A nurse who has received his or her license or permit according to the provisions of this law, shall be styled a "Registered Nurse," and may use the title or abbreviation "R.N."

Such registered nurses of any County in this State may maintain one or more Registration Bureaus, not for profit, to be conducted by recognized professional Registered Nurses' organizations for the enrollment of its professional members only, for the purpose of providing professional service to the public. When so operated, such Registration Bureaus shall not be liable for the payment of any occupation tax or license fee unless such Registration Bureaus are named specifically in any law imposing such occupation tax or license fee.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 194, ch. 140, § 1.]

**Art. 4523. Temporary Permit**

(a) Any nurse who has graduated from an accredited school of nursing, who holds a registration certificate as a Registered Nurse from another state or from a possession of the United States, who is actually engaged in the pursuit of her profession, coming to this State to remain three months or less, shall be permitted to practice under a permit issued by the board of nurse examiners, upon the payment of a fee of two dollars.

(b) Any nurse who has graduated from an accredited school of professional nursing in another state, coming to this State before registering in the State in which she graduated, may practice under a permit until the time of the next State Board Examination in Texas. A fee of Fifteen Dollars shall be sent with the application for such permit, which shall constitute her registration fee.

(c) All nurses graduating from an accredited school of professional nursing between the time of regular examinations, may practice under a permit until the time of the next State Board Examination. A fee of Fifteen Dollars shall be sent with the application for such permit, which shall constitute her registration fee.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 261, ch. 115, § 4; Acts 1969, 61st Leg., p. 1566, ch. 475, § 9, eff. June 10, 1969.]

**Art. 4524. Recording Certificate**

Every person receiving a certificate of registration as provided in this law shall within thirty days thereafter file the same for record with the county clerk of the county where such person resides, together with a certificate of his or her identity as the person to whom the same was issued, and his or her place of residence at the time of the examination and registration. The county clerk shall record such certificate together with the certificate of identity, in a book kept for that purpose, for which service he shall be paid by the holder of such certificate a fee of fifty cents. The county clerk shall furnish annually on the first

day of January to the Board of Nurse Examiners, upon blanks supplied by said Board, a duplicate list of all certificates so recorded by him during the preceding year, including therein the date of recording and the name and residence of the person filing the same, for which the board shall pay him a fee of two and one-half dollars.

[Acts 1925, S.B. 84.]

#### Repeals

*Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

#### Art. 4525. Disciplinary Proceedings

(a) The board of nurse examiners may refuse to admit persons to its examinations, or may refuse to issue a license or certificate of registration or to issue a certificate of re-registration, or may suspend for any period up to a year, or may revoke the license or certificate of registration or certificate of re-registration of any practitioner of professional nursing, for any of the following reasons:

(1) the violation, or attempted violation, of any of the provisions of this law, either as a principal or accomplice;

(2) conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude;

(3) the use of any nursing license, certificate or diploma, or transcript of such license, certificate or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;

(4) the impersonation of, or the acting as proxy for, another in any examination required by this law to obtain a license as a registered nurse;

(5) intemperate use of alcohol or drugs which, in the opinion of the board, endangers patients;

(6) unprofessional or dishonorable conduct which, in the opinion of the board, is likely to injure the public; or

(7) judgment by a court of competent jurisdiction that a person licensed to practice professional nursing is of unsound mind.

(b) Proceedings under this Article shall be begun by filing charges with the board of nurse examiners in writing and under oath. Such charges may be made by any person or persons. The board shall make such preliminary investigation of the charges as it deems

necessary and may issue a warning or reprimand to the person charged. If the disciplinary proceedings under Subsection (a) of this Article are contemplated or, in any event, if the person charged so requests, a hearing shall follow. The president of the board shall set a time and place for hearing and shall cause a copy of the charges together with a notice of time and place fixed for the hearing to be served on the person charged at least 10 days prior thereto. Notice shall be sufficient if sent by registered or certified mail to the person charged at the address shown on his or her most recent application for certificate of registration or re-registration. When no such address is available, the board shall cause to be published once a week for two consecutive weeks a notice of the hearing in a newspaper published in the county wherein the person charged was last known to practice, and shall mail a copy of such charges and of such notice to the respondent's last known address. When publication of the notice is necessary, the date of the hearing shall not be less than 10 days after the date of the last publication of the notice. At the hearing the person charged shall have the right to appear personally, or to be represented by counsel, or both; to produce witnesses or evidence in his own behalf; to cross-examine witnesses; and to have subpoenas issued by the board. The board shall thereupon determine the charges upon their merits. If requested by the person who is the subject of disciplinary proceedings, the board shall give in writing the reason for its decision.

(c) Any person whose license or certificate to practice professional nursing has been revoked or suspended by the board or who has been otherwise disciplined by the board may, within 20 days after the making and entering of such order, take an appeal to any of the district courts in the county of his residence, but the decision of the board shall not be enjoined or stayed except on application to such district courts after notice to the board. Upon application the board may reissue a license or certificate to practice professional nursing to a person whose license has been revoked or suspended but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the board may require.

(d) The board of nurse examiners is charged with the duty of aiding in the enforcement of the provisions of this chapter, and shall retain legal counsel to represent the board. The board shall have power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any



of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 1760, ch. 665, eff. Jan. 1, 1968.]

**Art. 4526. Re-registration**

On or before the first day of March of each year, the Executive Secretary shall mail to each nurse registered in this state a blank application for re-registration, addressing the same to the post office address as shown by the records of the Board. Upon receipt of such application blank, which shall contain space for such information as the Board shall deem necessary, he or she shall sign and swear to the accuracy of the same before some officer authorized to administer oaths, after which he or she shall forward such sworn statement and application for renewal of his or her registration certificate to the Executive Secretary, together with a fee of \$2.00. Upon receipt of such application and fee, and having verified the accuracy of the same by comparison with the applicant's initial registration statements, the Executive Secretary shall issue and mail to the applicant a certificate of re-registration which shall render the holder thereof a legally qualified registered nurse for the ensuing year. In case of refusal, notice of such fact shall be given. Certificates of re-registration shall bear the date of April of the year of issue, and shall expire on the last day of March in the year following. Should any registered nurse continue to practice professional nursing and caring for the sick beyond the time for which he or she is registered or re-registered, he or she shall be deemed to be an illegal practitioner and his or her license may be suspended or revoked by the Board. All nurses already registered in this state at the time of the passage of this law shall make application to the Executive Secretary for a re-registration blank upon receipt of which he or she shall, in the manner hereinbefore prescribed, make application for re-registration; failing which, the delinquent may be dealt with as provided in regard to the suspension or revocation of license.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 4, ch. 4, § 1; Acts 1969, 61st Leg., p. 1566, ch. 475, § 10, eff. June 10, 1969.]

**Art. 4526a. Expiration Dates of Registrations; Proration of Fees**

The board by rule may adopt a system by which registrations expire on various dates during the year, and the date on which the Executive Secretary shall mail re-registration blanks to registrants shall be adjusted accordingly. For the year in which the expiration

date is changed, re-registration fees payable on or before March 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the re-registration fee which is allocable to the months during which the registration is valid. On re-registration on the new expiration date, the total re-registration fee is payable.

[Acts 1973, 63rd Leg., p. 624, ch. 266, § 7, eff. June 11, 1973.]

**Art. 4527. Fees**

All fees received by said Board under this law shall be paid to the treasurer thereof, who shall pay the same out only on vouchers issued and signed by the president and executive secretary of said board. All money so received and placed in said fund may be used by said board in defraying its expenses in carrying out the provisions of this law. No expenses incurred by said board shall be paid by the State.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1566, ch. 475, § 11, eff. June 10, 1969.]

**Art. 4527a. Prohibited Practices**

Sec. 1. No person may sell, fraudulently obtain, or fraudulently furnish any nursing diploma, license, renewal license, or record, or assist another to do so.

Sec. 2. No person may practice professional nursing under cover of any diploma, license, or record

- (1) obtained unlawfully or fraudulently; or
- (2) signed or issued unlawfully or under false representation.

Sec. 3. No person, unless he is licensed under this chapter, may use in connection with his name the abbreviation "R. N." or any designation tending to imply that he is a licensed registered nurse.

Sec. 4. No person may practice professional nursing during the time his license is suspended or revoked.

[Acts 1967, 60th Leg., p. 1761, ch. 665, § 3, eff. Jan. 1, 1968.]

**Art. 4527b. Penalty**

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$250.

[Acts 1967, 60th Leg., p. 1762, ch. 665, § 3, eff. Jan. 1, 1968.]

**Art. 4527-1. Fees to be Charged by Board of Examiners**

The board of nurse examiners, in addition to other fees authorized heretofore, shall charge and receive for the use of the board the following fees:

For accreditation of new schools and programs .....	\$100.00
For admission fee to examinations, to be applied to all examinees in each examination .....	\$ 5.00

For approval of Exchange Visitor Programs .....	\$ 50.00
For duplicate or substitute of current certificate .....	\$ 5.00
For duplicate or substitute of permanent certificate .....	\$ 10.00
For duplicate permits .....	\$ 3.00
For endorsement of foreign applicants by examination .....	\$ 20.00
For filing affidavits in re change of name .....	\$ 5.00
For proctoring examinations of examinees from another State .....	\$ 20.00
For re-registration under Article 4526, Revised Civil Statutes of Texas, 1925, as amended .....	\$ 2.00
For verification of records .....	\$ 5.00

The board of nurse examiners shall set and collect a sales charge for making copies of any paper of record in the office of the board, and for any printed material published by the board, such charges to be in an amount deemed sufficient to reimburse the board for the actual expense.

[Acts 1969, 61st Leg., p. 1566, ch. 475, § 12, eff. June 10, 1969]

#### Art. 4528. Exceptions

This law shall not be construed to apply to: the gratuitous nursing of the sick by friends; the furnishing of nursing care where treatment is by prayer or spiritual means alone; acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners; Licensed Vocational Nurses; the practice of registered tuberculosis nurses certified under Article 4528b, Vernon's Texas Civil Statutes; nor to acts done by persons licensed by any board or agency of the State of Texas if such acts are authorized by such licensing statutes.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 1571, ch. 476, § 2, eff. June 10, 1969.]

#### Art. 4528a. Employment for Public Schools and Compensation

Sec. 1. That the Commissioners Court of the various Counties in the State of Texas shall have the authority, when in their judgment it shall be deemed to be necessary or advisable, to employ one or more Graduate Registered nurses whose duty it shall be to visit the public schools in the county in which they are employed, and to investigate the health conditions and sanitary surroundings of such schools, and the personal, physical and health condition of pupils therein, and to co-operate with the duly organized Board of Health and local health authorities in general public health nursing and perform such other and further duties as may be required of them by the Commissioners Court.

Sec. 2. That said nurses when so appointed shall be employed on a monthly salary to be fixed by the Commissioners Court and shall at all times be subject to removal by the Commissioners Court without prior notice.

Sec. 3. The Commissioners Court shall be empowered to appropriate from any funds of the respective counties the necessary money to cover the salary of such nurses, not to exceed the sum of Two Thousand, Seven Hundred Dollars (\$2,700) to each nurse, and in addition thereto may appropriate additional funds to cover all expenses that may be proper and necessary in the visiting of such schools, and General Public Health Nursing including transportation and other incidental expenses.

[Acts 1927, 40th Leg., p. 243, ch. 169; Acts 1949, 51st Leg., p. 431, ch. 231, § 1.]

#### Art. 4528b. Tuberculosis Nurses

##### Appointment of Board of Examiners

Sec. 1. The Governor shall, with the advice and consent of the Senate, appoint a Board of Tuberculosis Nurses Examiners to consist of three (3) members, and the term of office of those first appointed shall be: one for six (6) years, one for four (4) years, and one for two (2) years. Thereafter, the Governor shall biennially appoint one member of the Board whose term of office shall be six (6) years. Each member of the first Board shall be a tuberculosis nurse of good moral character and a graduate of the Sanatorium School of Nursing located at Sanatorium, Texas. Subsequent appointments may be made of registered tuberculosis nurses.

##### Election of Officers; Assistance in Enforcing Law

Sec. 2. The members of the Board shall elect from their number a president and a secretary who shall act as treasurer. Said Board shall assist the various county and district attorneys in the enforcement of the provisions of this Act.

##### Bond of Secretary-Treasurer

Sec. 3. The secretary-treasurer of the Board shall, within thirty (30) days after election by the Board, execute a bond in the sum of One Thousand (\$1,000.00) Dollars payable to the Governor, conditioned on the faithful performance of the duties of the office, and biennially account for all funds coming into her hands in her official capacity as secretary-treasurer of the Board.

##### Eligibility, Examination and Certification

Sec. 4. No person shall be certified as a graduate tuberculosis nurse unless such person has had two (2) full years of work and study in the Sanatorium School of Nursing at Sanatorium, Texas, or in some other school of tuberculosis nursing recognized and approved by the Board. Such graduate, upon presenting a certificate of graduation as provided herein to the State Board of Tuberculosis Nurses Examiners shall, upon payment of the fee required herein, be entitled to take examinations prescribed by the Board. Upon making the passing grades prescribed, the applicant shall be entitled to receive from the Board a certificate certifying that the applicant is a graduate tuberculosis nurse entitled to practice as a registered tuber-

culosis nurse in the State of Texas. Provided, that the practice of registered tuberculosis nurses shall be limited to the nursing of tuberculosis patients.

**Fees; Passing Grade; Character of Examination**

Sec. 5. Upon filing an application for examination, each applicant shall pay an examination fee of Ten (\$10.00) Dollars, which fee shall in no case be returned to the applicant. If the applicant passes the examination, no further fee shall be necessary. Any applicant for registration who fails to pass the examination herein provided for shall have the right after six (6) months and within one year from the first examination to stand a second examination on the subject or subjects failed, without the payment of any additional fee. If more than two examinations are necessary, a fee of Two (\$2.00) Dollars shall be charged for each additional examination. A grade of not less than seventy (70%) per cent shall be required to pass the examination. The examination shall be of such character as to determine the fitness of the applicant to practice professional tuberculosis nursing in this State.

**Filing Certificate; Exemptions from Examination**

Sec. 6. Every person receiving a certificate of registration as provided in this Act, shall within thirty (30) days thereafter file the same for record with the County Clerk of the county in which such person resides. No graduate tuberculosis nurse who has satisfactorily completed the specialized course in tuberculosis nursing at the Sanatorium School of Nursing, Sanatorium, Texas, or any other school of tuberculosis nursing approved and recognized by the Board, prior to the effective date of this Act, shall be required to stand any examination under this Act, but shall register with the County Clerk in the county of residence.

**Revocation of Certificate**

Sec. 7. The Board of Tuberculosis Nurse Examiners may by unanimous vote file a complaint against any registered nurse in the county court where such certificate is recorded, charging gross incompetency, malpractice, dishonesty, intemperance or any other act derogatory to the morals and standing of the profession of nursing. Thereupon the person against whom such complaint is filed shall be cited in writing to appear before said court on a date named in such citation, not less than ninety days from the issuance of said notice, to which citation there shall be attached a certified copy of the complaint so filed. If such court shall decree a revocation of the certificate of such nurse, he or she shall have the right to appeal to the District Court of such county. Such certificate shall upon such appeal remain in full force and effect until the same shall be disposed of by such District Court, the decision of which shall be final. Upon the revocation of any certificate as herein provided, the secretary of said Board shall strike the name of the holder of such certifi-

cate from the roll of registered nurses kept by such Board.

**Exceptions to Application of Law**

Sec. 8. This Act shall not be construed to apply to the gratuitous nursing of the sick by friends, nor to any person nursing the sick for hire who does not in any way assume or profess to practice as a graduate certified registered tuberculosis nurse.

**Severability of Provisions**

Sec. 9. The provisions of this Act shall be severable, and it is hereby declared to be the intention of the Legislature that partial invalidity hereof shall not affect the validity of the remaining portions of this Act.

[Acts 1950, 51st Leg., 1st C.S., p. 53, ch. 13.]

**Art. 4528c. Licensed Vocational Nurses**

**Definitions**

Sec. 1. (a) The term "Licensed Vocational Nurse" as used in this Act, shall mean any person who directly attends or cares for the sick for compensation or hire, and whose personal qualifications, preliminary education or nursing education in biological, physical and social sciences will not qualify that person to become certified as a professional registered nurse, as defined and regulated under the laws of this State, and who uses the designation Licensed Vocational Nurse, or the abbreviation L. V. N.

(b) The term "Board" as used in this Act, shall mean the Board of Vocational Nurse Examiners as provided for hereafter in this Act.

**Prohibiting Practice Without a License**

Sec. 2. After the effective date of this Act, no person except those hereinafter expressly exempted, shall use the designation as a Licensed Vocational Nurse or the abbreviation L. V. N., unless such person shall hold a duly issued license as such, issued by the Board pursuant to the provisions of this Act.

**Exceptions**

Sec. 3. The provisions of this Act shall not apply to gratuitous nursing of the sick by friends or members of the family; nor shall the provisions of this Act apply to persons licensed by the Board of Nurse Examiners; nor shall the provisions of this Act apply to those persons who have graduated or may hereinafter graduate from the State Tuberculosis Sanatorium School of Nurses, so long as such persons nurse only tubercular patients; nor to persons employed by hospitals as maids, porters or orderlies; nor shall the provisions of this Act apply to persons who do not hold themselves out to the public as being Licensed Vocational Nurses or using the abbreviation L. V. N.

**Exemption**

Sec. 3a. Recognized state-wide Licensed Vocational Nurses Organizations operating nonprofit registries for the enrollment of its

members for the purpose of providing nursing services to the public shall not be liable for the payment of any occupation taxes and/or license fees imposed by any law unless such Licensed Vocational Nurses registries are specifically named therein.

**Term of Office, Organization, Meetings of Board**

Sec. 4. (a) There is hereby created a board to be known as the Board of Vocational Nurse Examiners, consisting of nine (9) members to be appointed by the Governor and confirmed by the State Senate. The Board shall be composed of persons with the following qualifications: three (3) members of the Board shall be Licensed Vocational Nurses who shall have had a course of training as a Vocational Nurse, or equal training under any similar title such as Nursing Attendant, Nursing Aid, Practical Nurse, Technical Nurse, Nurse Technician, or Vocational Nurse, in a hospital staffed by physicians licensed by the Texas State Board of Medical Examiners or an institution, college or university providing the type of nurse training program as provided herein, and shall have been in active practice as a Licensed Vocational Nurse or such similar title for one (1) full year immediately preceding their appointment, provided, however, that after the first three (3) appointed under this Act, the requirements shall be three (3) years of active practice as a Licensed Vocational Nurse; two (2) members of the Board shall be Registered Nurses, registered with the State Board of Nurse Examiners; and one (1) of whom is actively engaged in a teaching, administrative or supervisory capacity in a Vocational Nurse training program, and the other of whom is actively engaged in a teaching, administrative or supervisory capacity in an accredited school of nursing; an accredited school of nursing as used herein shall mean a school of nursing that is accredited by the State Board of Nurse Examiners of Texas; two (2) members of the Board shall be persons licensed by the Texas State Board of Medical Examiners and who have been actively engaged in the practice of medicine for a period of five (5) years prior to their appointment, and neither of whom is actively engaged as a hospital administrator; two (2) members of the Board shall be hospital administrators who are not licensed either as nurses or by the Texas State Board of Medical Examiners or by any other board which licenses persons to practice the healing arts in this State, and who have been actively engaged in hospital administration for a period of five (5) years prior to appointment in a general hospital whose staff is composed of persons licensed by the State Board of Medical Examiners of Texas.

The term of office of each member of the Board shall be six (6) years, provided, however, in making the first appointments, the Governor shall appoint three (3) members of said Board for two (2) years, three (3) members for four (4) years, three (3) members for six (6) years, and thereafter the term of each member shall be six (6) years so that the

terms of three (3) members shall expire every two (2) years, and provided further that appointment shall be made by the Governor in such manner that the term of two (2) members representing the same professional group shall not expire at the same time, and provided further that no member shall immediately succeed himself (or herself) in office. In case of death, resignation or vacancy from any cause on the Board, the vacancy of the unexpired term shall be filled by the Governor within sixty (60) days after the occurrence of such vacancy.

Each appointee to the Board of Vocational Nurse Examiners shall, within fifteen (15) days of the date of his appointment, qualify by taking the constitutional oath of office.

(b) At the first meeting after appointment of members, the Board shall elect a President, Vice-president, and Secretary-treasurer, and thereafter shall elect such officers yearly at an annual meeting. The Board may make such rules and regulations as may be necessary to govern its proceedings and to carry in effect the purposes of this law. The Secretary-treasurer shall be required to keep minutes of each meeting of said Board, a register of the names of all nurses licensed under this law, and books of account of fees received and disbursements; and all minutes, the register of Licensed Vocational Nurses and books of account shall be at all times open to public inspection. The State Auditor shall audit the books of this Board annually. The Board may select or employ a person other than a Board member as the Office Manager or Chief Clerk. The Board shall have the power to employ the services of stenographers, inspectors, and such other assistants as they deem necessary in carrying out the provisions of this law. The Secretary-treasurer shall be bonded by the Board in such amount as may be recommended by the State Auditor.

(c) The Board shall employ a full-time Director of Training, who shall have had at least five (5) years experience in teaching nursing in an accredited school of nursing or an accredited training program. During the first five (5) years after the effective date of this Act, the Director of Training shall be a Registered Nurse, licensed by the State Board of Nurse Examiners. Thereafter, the Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Training. The duties of the Director of Training shall be to visit and inspect all schools for the training of Vocational Nurses at least once a year and to confer with superintendents of hospitals and superintendents of nursing schools as to the system of instruction given and as to accommodations and rules governing said schools in reference to its students. The Board shall prescribe such methods and rules of visiting, and such methods of reporting by the Director of Training as may in its judgment be deemed proper.

(d) Regular meetings of the Board shall be held at least twice a year, one of which shall be designated as an Annual Meeting for election of officers and the reading of auditors' reports, and at both regular meetings licenses shall be issued to those qualified. At least twice each year the Board shall hold examinations for qualified applicants for licensure. Examinations may be held in such cities throughout the State as the Board may designate under the supervision of a Board member or such other person as the Board may specify. Not less than sixty (60) days notice of the holding of the examination shall be given by publication in at least three (3) daily newspapers of general circulation, to be selected by the Board; special meetings shall be held upon request of four (4) members of the Board or upon the call of the president; six (6) members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three (3) successive days; each member of said Board shall be paid Twenty Dollars (\$20.00) per day for each day he attends meetings of the Board, not to exceed five (5) days for each meeting, and the time going to and returning from meetings shall be included in computing said time; in addition thereto, each member shall receive expenses incurred while actually engaged in the performance of the duties of the Board.

#### Appointments Beginning in 1957; Composition of Board

Sec. 4½. Beginning in 1957, and as terms of Board members expire, Licensed Vocational Nurses shall replace one Registered Nurse, one licensed physician, and one hospital administrator, until the Board shall thereafter be composed of six (6) Licensed Vocational Nurses, registered with the Board of Vocational Nurse Examiners, who shall have been in active practice in this State as a Licensed Vocational Nurse for three (3) years immediately preceding their appointment; one (1) Registered Nurse, registered with the State Board of Nurse Examiners of Texas, who is actively engaged in a teaching, administrative or supervisory capacity in a State accredited school of vocational or professional nursing; one (1) physician, licensed by the Texas State Board of Medical Examiners, who has been actively engaged in the practice of medicine for a period of five (5) years prior to his appointment and who is not actively engaged as a hospital administrator; and one (1) hospital administrator who is not licensed either as a nurse or by the Texas State Board of Medical Examiners or by any other board which licenses persons to practice the healing arts in this State, and who has been actively engaged in hospital administration for a period of five (5) years prior to appointment in a general hospital whose staff is composed of persons licensed by the Texas State Board of Medical Examiners.

#### Examinations and Issuance of Licenses

Sec. 5. (a) Except as provided in Section 6 and Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L. V. N. in the State of Texas, shall be required to pass the examination given by the Board of Vocational Nurse Examiners or its delegate. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant has had at least two (2) years of high school education or its equivalent; has attained the age of eighteen (18) years; is of good moral character; is in good physical and mental health (evidence of this fact shall be made by submitting an unsworn statement by a physician on a form prescribed by the Board); is a citizen of the United States or has made a declaration of intention of becoming a citizen; and has completed an accredited course of not less than twelve (12) months in an accredited school for training vocational nurses. An accredited school as used herein shall mean one accredited by the Board. Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.

(b) The Board in its discretion may waive the requirement in subdivision (a) of this Section for completion of a course in an accredited school for training Vocational Nurses upon presentation of satisfactory sworn evidence that the applicant is domiciled in this State and has completed at least two (2) years of training in a nursing school accredited by the State Board of Nurse Examiners of Texas or in some other school of professional nurse training accredited by a similar board or licensing agency of another State of the United States.

(c) In conducting examinations and in accrediting schools of Vocational Nurses and hospitals as provided for in this Act, it shall be mandatory upon the Board to ascertain that each Vocational Nurse shall have been taught the fundamentals of basic bedside nursing in the home and in the hospital. The course prescribed shall include cooking and preparation of standard simple diets for the sick; room cleaning and arrangement of the sickroom in the home or hospital; bed making; bathing and personal care of patients; cleansing and care of utensils used by the sick; the simple principles of hygiene and sanitation in the home and hospital; the methods of taking and recording temperature, pulse rate, respirations, blood pressure readings, fluid intake and output measurements, administration of foods and drugs by mouth, by rectum, by subcutaneous hypodermic injection, and such other subjects and procedures as may be regularly taught in the majority of such training programs.

(d) The Board shall issue Temporary Permits to any Vocational Nurse who furnishes proof of graduation from an accredited school of Vocational Nursing in this or any other State to practice Vocational Nursing from the

time of receipt of application until the time of completion of the next regular or special examination conducted by the Board.

(e) Any nurse who is licensed under the provisions of this Act, when on duty, whether in a public hospital or private, shall be authorized to wear identifying insignia on white caps and uniforms.

**Existing Vocational Nurses Licensed  
Without Examination**

Sec. 6. All persons who have practiced or engaged in the activity as a Vocational Nurse, or any similar title used for a non-professional unregistered nurse, under a licensed physician or a director of nursing service for one (1) year immediately prior to the effective date of this Act, may procure a license as a Licensed Vocational Nurse from the Board without examination upon the satisfactory proof as prescribed by the Board of such activity for the required time, and upon the payment of the fee hereafter required. Applicants for a license under this Section may apply for a license hereunder within one (1) year after the effective date of this Act and not thereafter.

**Reciprocity**

Sec. 7. Any applicant of good character who holds a license as an Attendant Nurse, Nursing Attendant, Nurse Aid, Nursing Aid, Practical Nurse, Technical Nurse, Nurse Technician, Vocational Nurse or any similar title used for a nonprofessional nurse unqualified for licensure as a Registered Nurse from another state whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required by this law, may be granted a license to practice nonprofessional nursing as a Licensed Vocational Nurse in this State without examination provided the required fee is paid to the Board by such applicant.

**Renewal**

Sec. 8. Before the first day of August of each year, the Secretary of the Board shall mail an application form for a renewal certificate to all licensees. The application shall contain such information as the Board may deem necessary for its records. On or before the first day of September of each year every Licensed Vocational Nurse in this State shall pay to the Secretary-Treasurer of the Board of Vocational Nurse Examiners the required fee for the renewal of such person's license as a Licensed Vocational Nurse for the current year. On receipt of said annual renewal fee and application the Board shall issue an annual renewal certificate bearing the number of the license and the year for which renewed. When a Licensed Vocational Nurse shall have failed to pay the annual renewal fee before November 1st of each year, it shall be the duty of the Board to notify such Licensed Vocational Nurse at the licensee's address known to the Board that such annual renewal fee is due and unpaid and if payment of the fee is not re-

ceived by the Secretary of the Board of Vocational Nurse Examiners within twenty (20) days after notification, said license shall be suspended and such person in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty in addition to all fees said person may be in arrears. Said annual renewal fee shall be due on September 1st of each year and shall become delinquent on November 1st of each year.

Practicing as a Licensed Vocational Nurse without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing as a Licensed Vocational Nurse without a license.

**Expiration Dates of Licenses; Proration of Fees**

Sec. 8A. The board by rule may adopt a system under which licenses expire on various dates during the year. All dates for mailing notice regarding payment of fees and the date of license suspension for nonpayment of fees shall be adjusted accordingly. For the year in which the expiration date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

**Fees**

Sec. 9. The following shall be the fees charged by the Board under this Act: application and examination fee not to exceed Twenty-five Dollars (\$25); reexamination fee not to exceed Twenty-five Dollars (\$25); annual renewal fee not to exceed Five Dollars (\$5); penalty for late annual renewal fee not to exceed Five Dollars (\$5); fee for license by reciprocity not to exceed Twenty-five Dollars (\$25); fee for accrediting training programs not to exceed Fifty Dollars (\$50).

All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas.

**Revocation or Suspension**

Sec. 10. The Board may revoke or suspend any license issued under the provisions of this Act for gross incompetence, dishonesty, malpractice, intemperate use of drugs or alcoholic beverages, false or deceptive representations in obtaining a license, insanity of the licensee, proof of the conviction of the licensee of a felony involving moral turpitude under the laws of this State or of any other State or of the United States, or for any other reason which shall be deemed just cause by the Board. Such revocation or suspension shall be accomplished by a majority vote of the Board after a hearing held on specific charges filed against such licensee, which charges shall be made in writing, under oath and filed by the Secretary. A certified copy of the charges and a notice of

the hearing before the Board shall be served on the licensee whose license is sought to be revoked or suspended not less than thirty (30) days prior to the hearing of such charges.

If the Board shall make and enter an order revoking or suspending any license as hereinabove authorized, the person whose license shall have been revoked or suspended may, within thirty (30) days after the entering of such order, and not thereafter, take an appeal to the District Court of the county of residence of the person whose license shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party filing same, as plaintiff, and the Board as defendant. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board, after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court a transcript of the order hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. The District Court shall thereafter set such cause for hearing as in other civil cases. Said trial shall be de novo as that term is used in appeals from Justice of the Peace Courts to County Courts and shall not be subject to the substantial evidence rule in sustaining administrative action by the Board. In all such cases the burden of proof shall be on the Board to sustain its action by a preponderance of the evidence. Either party may demand a jury in such trial, and either party may appeal the judgment of the Court, as in other civil cases. If no appeal be taken from the order of the trial Court, the same shall become final after thirty (30) days.

**Membership in Organization Recognizing Right to Strike or Engage in Organized Work Stoppage**

Sec. 10A. It shall be unlawful for any individual who has been licensed as a Licensed Vocational Nurse to be a member of any group, organization, association, or union which advocates or recognizes the right to strike, or which permits its members to engage in an organized work stoppage. Any person who has been licensed as a Licensed Vocational Nurse and who violates this Section of this Act, shall have his or her license suspended for a period of two (2) years, and the Board shall thereupon enter an order to such effect upon its minutes. It shall be incumbent upon the individual after the expiration of two (2) years to apply for a new license as a Licensed Vocational Nurse should such individual desire to engage in such work as herein authorized by this Act. It is the declared public policy of this State that a person who requires nursing care should be protected from organized work stoppages of any kind or character.

**Injunctions**

Sec. 11. Six (6) years after the effective date of this Act, any person practicing nursing

who is not licensed as a Vocational Nurse, or as a Registered Nurse, or as a Tubercular Nurse, and who does not come under any of the exceptions set out in this Act, may be enjoined and restrained by a District Court from practicing nursing upon petition of the Board.

**Accrediting of Training Programs**

Sec. 12. (a) Any general hospital in regular use for patients which has a registered nurse in charge of nursing, and whose staff consists of one or more licensed physicians licensed by the State Board of Medical Examiners, may qualify as an accredited hospital for Vocational Nurse Training, provided it can and will meet requirements of the Board for the training of Vocational Nurses.

(b) Any institution which shall be qualified under Section 5, and under regulations promulgated by the Board to conduct a course for training Vocational Nurses shall apply to the Board and shall accompany said application with evidence that it is prepared to give a course of not less than twelve (12) months for the training of Vocational Nurses; such application shall be accompanied by the appropriate fee provided for in Section 9 of this Act; upon receipt of such application the Board shall cause a survey of the institution making such application to be made by a qualified representative of such Board. If in the opinion of a majority of the members of the Board, the requirements for an accredited course for training Vocational Nurses are met by such institution, such institution shall be placed on an accredited list of such accredited institutions given for training Vocational Nurses. It shall further be the duty of the Board, from time to time, to survey all courses for such training of Vocational Nurses offered within the State. Written reports of such surveys shall be submitted to the Board. If the Board shall determine as a result of such surveys that any training school, hospital or institution heretofore accredited as an institution for such training for Vocational Nurses is not maintaining the standards required by law and by the rules and regulations promulgated by the Board, notice thereof shall immediately be given to such training school, hospital or institution. If the requirements of the Board are not complied with within a reasonable time set by the Board in such notices, such institution shall be removed from the list of approved training schools, hospitals or institutions offering courses for training Vocational Nurses within this State.

**Custody and Use of Revenues**

Sec. 13. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act shall be paid by the Board into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for use of the Board in the administration of the act upon requisition of the Board. All such moneys so paid into the State Treasury are

hereby allocated to the Board for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Board may occupy, and necessary traveling expenses for the Board or persons authorized to act for it when performing duties hereunder at the request of the Board. The Comptroller shall, upon requisition of the Board, from time to time, draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making any requisition; provided, however, that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the General Departmental Appropriation Act or other appropriation acts. At the end of a fiscal year, any unused portion of said fund in excess of the amount appropriated for the following fiscal year shall be set over and paid into the General Revenue Fund.

#### Constitutionality

Sec. 14. If any section, subsection or part of this Act shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such section, subsection or a part so held to be invalid or unconstitutional.

[Acts 1951, 52nd Leg., p. 197, ch. 118; Acts 1954, 53rd Leg., 1st C.S., p. 67, ch. 28, §§ 1, 2; Acts 1957, 55th Leg., p. 95, ch. 47, §§ 1 to 6; Acts 1957, 55th Leg., p. 1327, ch. 449, § 1; Acts 1963, p. 955, ch. 380, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 541, ch. 237, § 1, eff. May 19, 1967; Acts 1971, 62nd Leg., p. 1071, ch. 224, §§ 1-3, eff. Oct. 1, 1971; Acts 1971, 62nd Leg., p. 1812, ch. 538, §§ 1, 2, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 628, ch. 266, § 21, eff. June 11, 1973.]

**Art. 4528d. Repealed by Acts 1971, 62nd Leg., p. 3363, ch. 1024, art. 2, § 48, eff. Sept. 1, 1971**

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

## CHAPTER EIGHT. PHARMACY

### Article

4529 to 4542. Repealed.

4542a. State Board of Pharmacy to Regulate Practice of Pharmacy.

4542b. Purpose of Act.

**Arts. 4529 to 4542. Repealed by Acts 1929, 41st Leg., p. 242, ch. 107, § 18**

**Art. 4542a. State Board of Pharmacy to Regulate Practice of Pharmacy**

Membership; Qualifications; Terms; Vacancies; Oath

Sec. 1. The State Board of Pharmacy shall be composed of six (6) members to be appointed by the Governor, each of whom shall have been a registered pharmacist in this state under the

provisions of law for a period of five (5) years next preceding the appointment, and who continues to be actively engaged in the practice of pharmacy while serving the term for which he is appointed; and shall at the time of such appointment be in good standing and engaged in retail pharmacy and who is not a member of the faculty of any college or school of pharmacy, or shall have a financial interest in such school or college, and the majority of the Board shall be graduates of a recognized college or school of pharmacy. The term of office of each member of said Board shall be six (6) years. In case of death, resignation or removal of any member of the Board, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments. Each appointee to the State Board of Pharmacy shall within fifteen (15) days from the date of his appointment qualify by taking the Constitutional Oath of office. Provided that the present members of the Board shall serve the term for which they have been appointed.

#### Order of Appointment of Members; Vacancies

Sec. 2. In making the first appointment the Governor shall appoint two members of said board for two years, two for four years and two for six years, and thereafter the term of each member shall be six years so that the terms of two members shall expire every two years. Vacancies on the board shall be filled by the Governor for the unexpired term only.

#### Funds Received, Use Of

Sec. 3. The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of said Board; said compensation to each member of the Board not to exceed Twenty-five Dollars (\$25) per day, exclusive of necessary expenses in performance of his duties. Provided, however, that the premium on any bond required of the Secretary, or any other employee of the Board, shall be paid out of said fund, as well as the expenses of any employee incurred in the performance of his duties. The State Board of Pharmacy shall defray all expenses under this law from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the Board, or its officers or employees, or any other expenses thereof.

#### Officers of Board; Salary; Bond; By-laws and Regulations

Sec. 4. Said Board within thirty (30) days after appointment shall meet and organize by electing a president and vice-president and treasurer from its membership, and a secretary who may or may not be a member of the Board, whose salary shall be fixed by the Board. The secretary and treasurer shall each be required to execute a bond in the sum of Ten Thousand (\$10,000.00) Dollars for the faithful performance of his duties, payable to the State of Tex-



as. The Board shall have the power to make by-laws and regulations, not inconsistent with the law, for the proper performance of its duties and the duties of its officers and employees, and shall have the power to employ the necessary employees to carry out the provisions of this Act.

**Powers and Duties of Board; Records**

Sec. 5. The Board shall preserve a record of its proceedings in a book kept for that purpose. A record shall be kept showing the name, age and last known mailing address of each applicant for examination, the name and location of the University, School or College of Pharmacy from which he holds credentials, and time devoted to the study and practice of pharmacy, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters therein contained.

The Board shall have power to appoint committees from its own membership. The duties of such committees shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said Committees, and they shall make recommendations to the Board with reference thereto.

The Board, any Committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents; to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by strict rules of procedure or by the rules of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board may be represented by the Attorney General, or by the District Attorney or the County Attorney, and by other counsel when necessary.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

If a witness refuses to comply with said subpoena issued by said Board, or if a witness in attendance before the Board, or one of its duly appointed Committees, refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce books, records or papers, or to furnish other information when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county, and, upon proof of affidavit of the fact, have a rule or order, returnable in not less than one (1) nor more than five (5) days, directing such witness to show cause before the court who made the order, or any other District Judge of said county, why he should not be punished for contempt. Upon the return

of such order, the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard, and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce such books, records and documents as he was ordered to bring or produce, he shall forthwith punish the offenders as for contempt of court.

Subpoenas shall be served and witnesses' fees and mileage paid, as in civil cases in the District Court in the county to which such witnesses shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of the funds provided for in this Act.

The Board shall adopt an official seal and license of suitable design and shall maintain an office where all of the permanent records shall be kept.

**Meetings for Examination of Applicants;  
Reports to Governor**

Sec. 6. The State Board of Pharmacy shall hold regular meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it twice a year, and may hold such additional special meetings as may be necessary. The time and place of the regular meetings shall be designated at a regular session of the Board, and the additional meetings to be held at such places and on such dates as may be designated by the President of the Board.

The Board shall make annually to the Governor of the state a regular report of its receipts and disbursements; also the names of all pharmacists duly registered under this Act during the fiscal year for which the report is made, and the names of all pharmacists whose licenses or permits have been cancelled during the fiscal year.

**Enforcement of Laws**

Sec. 7. It shall be the duty of the State Board of Pharmacy to see that all laws which pertain to the practice of pharmacy are enforced and to cooperate with other State and Federal Agencies regarding any violations of any drug laws.

**Distribution of Drugs or Medicines, Except in Original  
Packages, Unlawful; Exceptions**

Sec. 8. It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine, prepare, label, sell, or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this State shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry, or chiropody, who is duly registered as such by his respective State

Board of Examiners of this State, who shall supply his or her patients, as a physician, dentist, or chiroprapist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop, or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiroprapist, or veterinarian licensed by his respective Board of Examiners of this State, in order to supply the immediate needs of his patients; nor to prevent the sale by persons, firms, joint stock companies, partnerships, or corporations, other than registered pharmacists, of patent or proprietary medicines, or remedies and medicaments generally in use and which are harmless if used according to instructions as contained upon the printed label, with the exception, however, of exempt narcotics; and insecticides and fungicides and chemicals used in the arts, when properly labeled; nor insecticides or fungicides that are mixed or compounded for purely agricultural purposes.

Provided further, this Section shall not apply to:

(1) members of the faculty of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy where such faculty members who are registered pharmacists, perform their services for the sole benefit of such school or college, or to

(2) senior students of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy who perform their services without pay in the presence and under the direct supervision of a registered pharmacist who is a member of the staff of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy, provided that the sale of such preparations and prescriptions so compounded by such senior students shall be restricted to duly registered students of the college or university attended by such senior students.

(3) pharmacist-interns, certified by the Board of Pharmacy, who are graduate students or, if the Board shall so determine, undergraduate students lacking no more than 30 credit hours of work toward their baccalaureate pharmacy degree, both of which are performing their services as a part of their internship in the presence of and under the supervision of a registered pharmacist who has been certified by the Board of Pharmacy as a preceptor for undergraduate or post-graduate internship and who shall be personally responsible to the Board of Pharmacy for the action of the pharmacist-intern.

Examinations; Application; Qualification; License;  
Persons from Other States

Sec. 9. Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in The University of Texas, and that he has attended and graduated from a reputable university, school, or college of pharmacy which meets with the requirements of the Board, and shall have had at least one thousand (1,000) hours of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist as follows: the applicant shall have been actually employed substantially all of one (1) year in such capacity, provided that part time employment of not more than forty (40) hours per week gained in a maximum of eight (8) hour days may be credited toward the minimum practical experience to fulfill this requirement. If the applicant does not actually work substantially all of one (1) year in any calendar year period, the time actually worked may be added to work he may perform during the following year or years in order to fulfill one thousand (1,000) hours of practical experience. A university, school, or college of pharmacy is reputable whose entrance requirements and course of instruction are as high as those adopted by recognized universities, schools, or colleges of pharmacy, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each, and approved by the Board.

The examination shall consist of written, oral, and/or practical tests in pharmacy, chemistry, pharmaceutical jurisprudence, poology, toxicology, bacteriology, physiology, pharmacognosy, and pharmacology, and in such other subjects as may be regularly taught in all recognized universities, schools, and colleges of pharmacy.

Each applicant for license to practice pharmacy in Texas shall be given due notice of the time and place of examination. All examinations shall be conducted in writing and by such other means as the State Board of Pharmacy shall deem adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals in every recognized school of pharmacy. All applicants examined at the same time shall be given the same regular examinations, and each applicant successfully passing the examination and meeting all requirements of the State Board of Pharmacy shall be registered by the Board as possessing the qualifications

required by this law, and shall receive from said Board a license to practice pharmacy in this State. Provided that the State Board of Pharmacy may, in its discretion, upon the payment of One Hundred Dollars (\$100), grant a license to practice pharmacy to persons who furnish proof that they have been registered as such in some other state or territory, and that they are of good moral character, provided that such other Board in its examination required the same general degree of fitness required by this State, and grants the same reciprocal privileges to pharmacists of this State.

No person who is a member of the Communist Party, or who is affiliated with such party, or who believes in, supports, or is a member of any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods, shall be authorized to practice pharmacy in the State of Texas, or to receive a license to practice pharmacy in the State of Texas.

Every person admitted to practice pharmacy in the State of Texas shall, before receiving his license, make oath that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Any person who shall falsely make the affidavit prescribed in the foregoing paragraph shall be deemed guilty of fraudulent and dishonorable conduct, and malpractice, and shall be subject to all penalties which may be prescribed for making false affidavit.

**Unlawful to Impersonate Applicant or Fraudulently Acquire License**

Sec. 10. It shall be unlawful for any person to impersonate before the Board an applicant applying for registration or license under this Act, or to fraudulently acquire a license in any other manner than provided for in this Act.

**Fees, Examination of Books and Records**

Sec. 11. The State Board of Pharmacy shall charge a fee of Twenty Dollars (\$20) for examining an applicant for license, which fee must accompany the application. If an applicant who, because of failure to pass the examination, is refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The State Auditor of the State of Texas shall, not less than once each year, examine and audit the books and records of the State Board of Pharmacy, and report his findings to the Governor of the State of Texas.

**Revocation or Suspension of License; Appeal**

Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend

the operation of any license by it granted for any of the following reasons:

(a) That said applicant is guilty of gross immorality;

(b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;

(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; provided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;

(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act,<sup>1</sup> or any other dangerous or habit-forming drugs;

(h) That said licensee has engaged in the act of "substitution" as that term is hereinafter defined. The term "substitution" as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;

(i) That said licensee is a member of the Communist Party or affiliated with such party.

Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where

said applicant resided at the time the offense was committed which resulted in the Board's action refusing, revoking, or suspending said license.

<sup>1</sup> Article 4476-15.

#### Display of Certificate in Place of Business

Sec. 13. All certificates and current renewal receipts for pharmacists and Permits for the operation of a Pharmacy, as herein provided shall be at all times conspicuously displayed in the place of business where registrant is engaged as such. Any certificate to practice pharmacy in Texas which shall be found displayed in any place of business where the person to whom said certificate was originally issued is not regularly employed as a pharmacist and actually engaged in the service of filling prescriptions may be cancelled, suspended or revoked by the Board and any inspector, member or official of the Board is hereby empowered to take charge of such certificate pending final hearing before the Board as to revocation of same.

#### Annual Renewal Fee; Practicing Without Renewal Certificate; Duplicates

Sec. 14. (a) On or before the first day of each year every licensed pharmacist in this state shall pay to the Secretary of State Board of Pharmacy an annual renewal fee not to exceed Fifteen Dollars (\$15.00) for the renewal of his license to practice pharmacy for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for the records of the Board which said Board may deem necessary. When a pharmacist shall have failed to pay his annual renewal fee before March 1st of each year, said license shall be suspended, and such person in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such person may be in arrears. Said renewal fee shall be due on January 1st of each year, and shall become delinquent on March 1st of each year.

(b) Practicing pharmacy without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect, and be subject to all penalties of practicing pharmacy without a license.

(c) No license to practice pharmacy or annual renewal certificate issued by the Board shall be duplicated in any manner except as expressly set forth hereafter. The Board may in its discretion issue duplicate copies of either the license to practice pharmacy or the annual renewal certificate upon request from the holder of same.

#### Expiration Dates of Licenses; Proration of Fees

Sec. 14A. The board by rule may adopt a system under which licenses expire on various dates during the year, and the date for license suspension upon failure to pay shall be adjusted accordingly. For the year in which the ex-

piration date is changed, license fees payable on January 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date the total license renewal fee is payable.

#### Stores to Display "Pharmacy"

Sec. 15. In all stores in which a registered pharmacist is continuously employed and where the provisions of this Act have been fully complied with, there shall be displayed in a prominent place in or on the front of said store the word "pharmacy".

#### Unlawful Use of "Pharmacy"

Sec. 16. It shall be unlawful for any person to display in or on any store or place of business the word "pharmacy", either in English or any foreign language, or any other word or combination of words of the same or similar meaning which would or would tend to mislead the public that prescriptions could be filled in such store or place of business, unless there is continually employed therein a registered pharmacist, and unless prescriptions are, in fact, filled in such store or place of business.

#### Permits for Stores or Factories

Sec. 17. (a) Every person, firm, joint stock company, partnership, or corporation desiring to operate a retail pharmacy, drug store, dispensary, or apothecary shop in this State, as the same is defined herein, shall procure from the State Board of Pharmacy a permit for each and every retail pharmacy, drug store, dispensary, or apothecary shop to be operated by making an application to the Board upon a form to be furnished by the Board. Such application form shall set forth under oath the ownership and location of such retail pharmacy, drug store, dispensary, or apothecary shop, the certificate number of the pharmacists registered in the State who are to be continually employed by the retail pharmacy, drug store, dispensary, or apothecary shop, and such other and further information as may be desired by the Board. No pharmacist may legally dispense medications in a pharmacy, drug store, dispensary, apothecary shop or prescription laboratory not duly licensed by the State Board of Pharmacy except as provided for in Section 17(k) hereof.

(b) Every person, firm, joint stock company, partnership, or corporation desiring to operate as a manufacturer of drugs and medicines as defined herein shall procure from the State Board of Pharmacy a permit for each and every factory to be operated by making an application to the Board upon a form to be furnished by the Board. Such application form shall set forth under oath the ownership and location of each factory, the certificate number of the pharmacists registered in the State who are continually employed by the factory, and

such other and further information as may be desired by the Board.

(c) No license shall be issued under the foregoing subsections unless and until the applicant therefor has furnished satisfactory proof to the State Board of Pharmacy:

(1) That the applicant is of good moral character, or, if the applicant be an association, joint stock company, partnership, or corporation, that the managing officers are of good moral character; and

(2) That the applicant is engaged in the business described in his application.

(d) The State Board of Pharmacy may, in its discretion, refuse to issue a permit to any applicant, and may cancel, revoke, or suspend the operation of any permit by it granted under the foregoing subsections for any of the following reasons:

(1) That the applicant has been convicted of a felony or a misdemeanor which involves moral turpitude, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor which involves moral turpitude;

(2) That the applicant has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act,<sup>1</sup> or any other dangerous or habit-forming drugs, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances, or any other dangerous or habit-forming drugs;

(3) That the applicant applying for, or licensed, pursuant to Subsection (a) hereof has in any manner advertised his selling price for any drug or drugs which bear the legend: "Caution: Federal law prohibits dispensing without prescription";

(4) That any owner or employee of an owner of a licensed retail pharmacy, drug-store, dispensary, or apothecary shop, pursuant to Subsection (a), has violated any provision of this Act;

(5) That the applicant has sold counterfeit drugs and medicines, or has sold without a prescription drugs and medicines bearing the legend: "Caution: Federal Law prohibits dispensing without prescription," to persons other than:

(A) the owners or operators of a pharmacy, drug store, dispensary,

apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

(B) practitioners;

(C) persons who procure controlled substances or dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

(D) hospitals which procure controlled substances or dangerous drugs for lawful administration by practitioners;

(E) officers or employees of federal, state, or local government acting in the lawful discharge of their official duties;

(F) manufacturers and wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes);

(G) carriers and warehousemen.

(e) At any time after the issuance of a permit by the State Board of Pharmacy under the provisions of this Section, the Board may revoke, suspend, or cancel the permit when satisfactory proof has been presented to the Board that said permit holder is no longer conducting or engaged in the business described in his application. Any inspector, member, or official of the Board is hereby empowered to take charge of such permit pending final hearing before the Board, as to revocation of same.

(f) The permit provided for in Subsection (a) of this Section shall be issued annually by the Board upon receipt of the proper application accompanied by a fee of Twenty-five Dollars (\$25).

(g) The permit provided for in Subsection (b) of this Section shall be issued annually by the Board upon receipt of proper application accompanied by a fee of Two Hundred Dollars (\$200).

(h) All permits issued under the provisions of this Section shall expire on May 31st of each year and must be renewed on or before June 1st of each year. Where a permit holder shall have failed to pay his annual renewal fee on or before June 1st of each year, said permit shall be suspended and such permit holder in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such permit holder may be in arrears.

(i) Every person, firm, joint stock company, partnership, corporation, or manufacturer desiring to open a new pharmacy, drug store, dispensary, apothecary shop, or factory, shall procure the appropriate permit above mentioned before beginning its operation as such, and the same discretionary powers may be used by the Board in passing upon such applications. Not more than one (1) pharmacy, drug store, dis-

pensary, apothecary shop, or factory may be operated under one (1) permit.

(j) In case of a change in personnel of registered pharmacists, the Board shall be notified of such change within ten (10) days; provided the same pharmacist's name shall not appear on more than one (1) permit.

(k) No provision of this Act shall be construed to apply to any hospital or clinic maintaining or operating a dispensary, apothecary shop, or prescription laboratory for the care of its patients as long as a licensed pharmacist is continuously employed to compound said prescriptions.

<sup>1</sup> Article 4476-15.

#### Repeals

Sec. 18. Chapter 8 of Title 71 of the Revised Civil Statutes of 1925 and all other laws and parts of laws in conflict with this Act are hereby repealed, provided that nothing herein contained shall be construed to amend or repeal any Acts or sections of Acts which govern the manufacture, sale or distribution of narcotics or spirituous liquors.

#### Pharmacy, Drug Store, Dispensary, Apothecary Shop or Prescription Laboratory Defined

Sec. 19. A pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, as used in this Act, is any store or place where drugs or medicines are sold or furnished in any manner at retail or for a fee to the consumer wherein a registered pharmacist is employed.

Provided, however, that no provision of this Act shall be construed to apply to any hospital or clinic maintaining or operating a dispensary, apothecary shop or prescription laboratory for the care of its patients as long as a licensed pharmacist is continually employed to compound said prescriptions.

#### Definitions

Sec. 20. A "pharmacist" as used in this Act shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy, and to prepare, compound, and dispense physicians' prescriptions, drugs, medicines, and poisons.

A "manufacturer," as used in this Act, shall mean one who processes, combines, mixes, compounds, prepares, labels, packages or manufactures medicines or drugs for sale or distribution, either at wholesale or retail.

The term "Board" as used in this Act shall mean the State Board of Pharmacy.

The practice of pharmacy in the State of Texas is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to practice pharmacy in the State of Texas. This

Act shall be liberally construed to carry out these objects and purposes.

#### Prices of Common Prescriptions; Compilation and Posting; Deceptive Advertising

Sec. 20A. I. Definitions: In this Act, unless the context requires a different definition:

(1) "100 most commonly prescribed drugs" means the 100 most commonly prescribed in Texas by brand name or generic name by manufacturer as determined by the State Board of Pharmacy.

(2) "Person" means a natural person, association of natural persons, corporation, partnership, or other private legal entity.

(3) "Consumer patient" is a person as defined under the terms of this Act.

II. Policy. (a) It is the policy of this state to permit and encourage, for the benefit of the citizens of this state, the availability of factual information regarding charges by licensed pharmacists or pharmacies for prescription drugs and the professional services and non-professional convenience services associated with the dispensing of such drugs. It is the stated purpose of this Section, when read in conjunction with Section 17(d)(3) to permit and encourage the availability of such factual information in a manner which will not encourage unfair or deceptive competitive practices but will assist the public in making informed purchasing decisions based on total value received for prescription drug expenditures and not based on price alone. It is also the policy of this state, recognizing that prescription drugs are designated as such by law because they are potent medications not safe for use except when medically necessary and then only under close professional supervision and control, that information permitted and encouraged by this Section when read in conjunction with Section 17(d)(3), shall be provided the public only in a manner which will not serve to create artificial demand for prescription drugs; and it is likewise intended that the provisions of this Section be the exclusive method by which price information shall be available to the general public.

(b) A licensed pharmacy shall have available to the public at the prescription department or other dispensing area in complete public view, in a standard format authorized by rule or regulation of the Texas State Board of Pharmacy, a poster containing the one hundred (100) most prescribed drugs in Texas and the maximum charges to the public for prescription drugs, including charges for professional services and nonprofessional convenience services specified by rule or regulation of the Texas State Board of Pharmacy which the pharmacy includes and does not include within the posted maximum charge.

(c) A licensed pharmacy having posted maximum charges for prescription drugs as permitted by, and in compliance with, this Sec-

tion shall be deemed in compliance with these requirements.

(d) No notice or advertising to the general public shall contain promotional claims or statements comparing, either directly or indirectly, the charges either listed or otherwise charged for specific prescription drugs or prescription drugs generally, with the charges either listed or otherwise charged for specific prescription drugs generally by any other pharmacist or pharmacy; and provided, further, that no such notice shall contain any claims or statements comparing, either directly or indirectly, the professional services or non-professional convenience services provided the public by any other pharmacist or pharmacy; nor shall any pharmacy publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, window display, poster, sign, billboard or any other means or media any statement or advertising concerning prescription medication which is fraudulent, deceitful or misleading, including statements or advertisements of bait, discounts, premiums, price, gifts or any statement or advertisements of a similar nature, import or meaning, or any statement or advertisement of or reference to the price of prescription medication except in compliance with this Act.

(e) The State Board of Pharmacy may, in its discretion, cancel, revoke or suspend the operation of any pharmacy permit granted under Section 17 of this Act, if they find that a pharmacy has failed to comply with any of the provisions hereof. Appeals from the decision of the Board shall be in accordance with Section 12 of this Act.

**Display of License; Application for Renewal; Penalty**

Sec. 21. Every license to practice pharmacy, and every license to any proprietor or employee to conduct a drug store, pharmacy or factory, and every renewal of such license or annual renewal certificate shall be conspicuously displayed in the place of business of which the pharmacy or person to whom it is issued is the owner or manager, or in which he is employed.

Every licensed pharmacist who desires to continue in the practice of his profession shall within thirty (30) days next preceding the expiration of his license or annual renewal certificate file with the Board his application for the renewal thereof.

If any pharmacist shall fail for a period of sixty (60) days after the expiration of his license or annual renewal certificate to make application to the Board for its renewal, his name shall be stricken from the register of licensed pharmacists. The name of the responsible manager of every pharmacy, drug store or apothecary shop shall be conspicuously displayed outside of such place of business.

Any person not being licensed as a pharmacist who shall compound, mix, blend, dispense, prepare or sell at retail any drugs, medicines, poisons or pharmaceutical preparations upon a

physician's prescription, or otherwise, and whoever, being the manager or owner of the drug store, pharmacy or factory, or other place of business, shall manufacture, or permit anyone not licensed as a pharmacist to compound, mix, blend, dispense any drugs, medicines, poisons or pharmaceutical preparations, on physician's prescription, contrary to any of the provisions of this Act, shall be subject to the penalties of this Act.

Any license or permit or renewal certificate obtained through fraud or by false or fraudulent representations shall be void and of no effect in law, and shall be subject to the penalties provided for in this Act.

Any person who shall make any false or fraudulent representations for the purpose of procuring a license or renewal certificate, either for himself or for another, shall be subject to the penalties provided for in this Act.

Any person being the holder of a pharmacist's license or renewal certificate who shall fail to display such license or renewal certificate in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, shall be subject to the penalties provided for in this Act, and each day such license or renewal certificate is not displayed shall be a separate offense.

Any person being the holder of any license or renewal certificate or store or manufacturer's permit under this law who shall, after the expiration of such license or manufacturer's permit, drug store or pharmacy permit, fail to renew same, and who continues to carry on the business for which such license, renewal certificate or permit was granted shall be subject to the penalties provided for in this Act.

Any person, firm, corporation, partnership, or joint stock company violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, or be confined in jail for not less than one (1), nor more than six (6) months, or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

It shall be unlawful for any member of the Board to permit any applicant to take the examination herein provided for, unless such applicant furnishes written proof to said Board that such applicant is qualified as herein provided in this Act to take such examination. Any member of the Pharmacy Board violating this Section shall be guilty of a misdemeanor and shall be punished as provided in the preceding paragraph.

**Imposition and Disposition of Fines**

Sec. 21a. Notwithstanding any other Section contained in this Act, the State Board of Pharmacy shall have, in addition to the sanctions available in Sections 12 and 17 hereof, the authority to impose fines for violation of

this Act. Such fines shall be up to, but no higher than, Two Hundred Fifty Dollars (\$250.00) for each count or violation, and such fines may be assessed independently or in conjunction with the other sanction authorized by this Act.

All fines assessed for violations of this Act shall be paid to the fund created by Section 3 of this Act for use in accordance with the provisions of that Section.

[Acts 1929, 41st Leg., p. 242, ch. 107; Acts 1935, 44th Leg., p. 251, ch. 98, §§ 1, 3 to 5; Acts 1943, 48th Leg., p. 710, ch. 395, §§ 1 to 17; Acts 1951, 52nd Leg., p. 824, ch. 469, §§ 1 to 6; Acts 1953, 53rd Leg., p. 916, ch. 378, § 1; Acts 1957, 55th Leg., p. 1324, ch. 447, § 2; Acts 1959, 56th Leg., p. 1068, ch. 489, §§ 1 to 8; Acts 1963, 58th Leg., p. 958, ch. 383, §§ 1, 2; Acts 1967, 60th Leg., p. 1006, ch. 436, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 138, ch. 70, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., pp. 677, 679, ch. 286, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., pp. 1169, 1170, ch. 429, § 6.03(e), 6.03(f), eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 625, ch. 266, § 8, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 1178, ch. 431, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1039, ch. 403, § 1, eff. Aug. 27, 1973.]

#### Art. 4542b. Purpose of Act

It is the purpose of this law to enable the State Board of Pharmacy to administer in the interest of public health the Texas Pharmacy Law governing the profession of pharmacy and its distribution of drugs and medicinals.

[Acts 1957, 55th Leg., p. 1324, ch. 447, § 1.]

### CHAPTER NINE. DENTISTRY

#### Article

- 4543. Appointment; Qualifications.
- 4544. Examination for License to Practice Dentistry.
- 4544a. Board to Aid in Enforcing Statutes.
- 4545. Qualifications of Applicants.
- 4545a. Reciprocal Arrangements.
- 4546. County Clerk to Record License; Fee.
- 4546a. County Clerk to Record License; Fee.
- 4547. Persons Already Licensed.
- 4548. License Required to Practice.
- 4548a. Unlawful to Practice Without License.
- 4548b. Must Comply With Law.
- 4548c. Practice After License Has Been Revoked.
- 4548d. Shall Exhibit License.
- 4548e. Use of Own Proper Name Instead of Corporate or Trade Name; Practice as Partnership.
- 4548f. Unlawful Advertising.
- 4548g. Unprofessional Conduct.
- 4548h. Refusal, Revocation, Cancellation or Suspension of License.
- 4548i. Punishment.
- 4548j. Accomplice Testimony.
- 4549. Refusing Examination or License, Revocation of License.
- 4549a. False or Misleading Statements to Patients Prohibited; Posting of School Diploma.
- 4550. Record of Board.
- 4550a. Application, Registration Fund, and Secretary.
- 4550b. Expiration Dates of Registrations; Proration of Fees.
- 4551. Fees and Expenses.
- 4551a. Persons Regarded as Practicing Dentistry.
- 4551a-1. Persons Regarded as Practicing Dentistry.
- 4551b. Exceptions.
- 4551b-1. Exceptions.
- 4551c. Restraining Practice in Violation of Law.

#### Article

- 4551d. Rules and Regulations of Board.
- 4551d(1). Dental Laboratories and Technicians; Rules and Regulations.
- 4551e. Dental Hygienists; Regulation and Licensing.
- 4551f. Dental Technicians and Laboratories; Regulations of Acts and Services.
- 4551g. Prescription Required.
- 4551g-1. Prescription Required.
- 4551h. Narcotic Drugs.

#### Art. 4543. Appointment; Qualifications

The State Board of Dental Examiners, also known as the Texas State Board of Dental Examiners, shall consist of nine reputable, practicing dentists who have resided in the State of Texas and have been actively engaged in the practice of dentistry for five years next preceding their appointment, none of whom shall be members of the faculty of any dental or dental hygiene school or college or of the dental or dental hygiene department of any medical school or college or shall have a financial interest in any such school or college. The term of office of each member of said Board shall be six years or until their successors shall be appointed and qualify. The terms shall be staggered with the terms of one-third of the members expiring every two years. The nine members of said Board shall be appointed by the Governor of the State. Before entering upon the duties of his office each member of the Board shall take the constitutional oath of office, same to be filed with the Secretary of State. At its first meeting the Board shall organize by electing one member President and one Secretary chosen to serve one year. Said Board shall hold regular meetings at least twice a year at such times and places as the Board shall deem most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. The Board may prescribe rules and regulations, in harmony with the provision of this title governing its own proceedings and the examinations of applicants for the practice of dentistry.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, c. 244, § 1; Acts 1971, 62nd Leg., p. 1391, ch. 375, § 1, eff. Aug. 30, 1971.]

Sections 1 to 5 of the 1971 act amended this article, sections 1 and 2 of article 4550a, art. 4551 and section 6 of art. 4551e respectively. Sections 6 to 8 thereof provided:

"Sec. 6. The members of the State Board of Dental Examiners, also known as the Texas Board of Dental Examiners, holding office on the effective date of this Act continue to hold office for the terms to which they were appointed. In expanding the membership of the board, the Governor shall appoint one member for a term expiring in May, 1973, one for a term expiring in May, 1975, and one for a term expiring in May, 1977.

"Sec. 7. All laws or parts of laws in conflict herewith are hereby repealed.

"Sec. 8. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional."



**Art. 4544. Examination for License to Practice Dentistry**

It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State; and the Board shall examine and grade all papers submitted by such applicants and report to such applicants within a reasonable time after the date of such examination, and said report shall give to each applicant the grades made by said applicant upon each and every subject which he or she was examined by said Board. Each person applying for an examination shall pay to said Board a fee of Fifty Dollars (\$50) and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination before said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, ch. 244, § 2; Acts 1943, 48th Leg., p. 576, ch. 340, § 1; Acts 1947, 50th Leg., p. 752, ch. 371, § 1; Acts 1961, 57th Leg., p. 1101, ch. 496, § 3.]

**Art. 4544a. Board to Aid in Enforcing Statutes**

The State Board of Dental Examiners is charged with the duty of aiding in the enforcement of the Statutes of this State regulating the practice of dentistry and any member of said Board may present to a prosecuting officer complaints relating to violations of such Statutes; and said Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said Statutes subject to the control of the prosecuting officers.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 3.]

**Art. 4545. Qualifications of Applicants**

Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age, a citizen of the United States of America, and shall present a diploma from a reputable dental college and evidence of good moral character. A dental college shall be held reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, ch. 244, § 4; Acts 1943, 48th Leg., p. 576, ch. 340, § 2; Acts 1945, 49th Leg., p. 462, ch. 292, § 1.]

**Art. 4545a. Reciprocal Arrangements**

The State Board of Dental Examiners may, in the discretion of the Board in each instance, upon payment by the applicant for registration of a fee of Fifty (\$50.00) Dollars, grant license to practice dentistry to any reputable dentist who is a graduate of a reputable dental college or has qualified on examination for the certificate of dental qualification for a commission as a dentist in the medical corps of the United States Army or Navy and to licentiates of other States or territories having requirements for dental registration and practice equal to those established by this law. Applications for license under the provisions of this Article shall be in writing and upon a form to be prescribed by the State Board of Dental Examiners. Said application shall be accompanied by a diploma or a photograph thereof, awarded to the applicant by a reputable dental college, or a certified transcript of the certificate or license or commission issued to the applicant by the medical corps of the United States Army or Navy, or by a license or a certified copy of license to practice dentistry, lawfully issued to the applicant by some other State or territory; and shall also be accompanied by an affidavit from an executive officer of the medical corps of the United States Army or Navy, the President or Secretary of the Board of Dental Examiners who issued the said license, or by a legally constituted dental registration officer of the State or territory in which the certificate or license was granted upon which the applications for dental registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge by the dental corps of the United States Army or Navy, and that the statement of qualifications made in the application for dental registration in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced dentistry in the State or territory from which the applicant removed, was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license, or commission and the said dental diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license or authority to practice dentistry in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application, pending against the applicant in any State or Federal Court for any offense which under the law of Texas is a felony.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 4.]

**Art. 4546. County Clerk to Record License; Fee**

Every person to whom a license is issued by the State Board of Dental Examiners shall, before beginning the practice of dentistry at any place in this State, present the same to the County Clerk of the county in which he resides and offers to practice, and to the County Clerk of each and every other county in which he may practice or offer to practice; said County Clerk shall record said license in a book provided for the purpose, and receive fifty (50¢) cents therefor. Absence of the record of such license in any place where such license is hereby required to be recorded shall be prima facie evidence in any court of this State of the want of possession of such license.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, ch. 244, § 5.]

**Repeals**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

**Art. 4546a. County Clerk to Record License; Fee**

Every person to whom a license is issued by the State Board of Dental Examiners shall, before beginning the practice of dentistry at any place in this State, present the same to the County Clerk of the county in which he resides and offers to practice, and to the County Clerk of each and every county in which he may practice or offer to practice; said County Clerk shall record said license in a book provided for that purpose and receive fifty (50¢) cents therefor. Absence of the record of such license in any place where such license is required to be recorded shall be prima facie evidence in any court of this State of the want of possession of such license.

[Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 14.]

**Art. 4547. Persons Already Licensed**

Any person who has heretofore been licensed, authorized, or granted permission to practice dentistry or dental surgery under the laws of this State, and who has so practiced under said license, authorization or permit, previous to the passage of this law, and who desires to obtain a license of authority from the board created under this law, upon presentation and surrender to the board of said license, authorization or permit, and an affidavit that he is the same person to whom same was originally granted, shall be granted a license

under this law. No person shall be required to surrender an old license for a new one unless he so desires. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license.

[Acts 1925, S.B. 84.]

**Art. 4548. License Required to Practice**

No person shall practice or offer, or attempt to practice dentistry or dental surgery in this State, without first having obtained a license from the State Board of Dental Examiners, as provided for in this law, provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing herein applies to any person legally engaged in the practice of dentistry in Texas at the time of the passage of this law.

[Acts 1925, S.B. 84.]

**Art. 4548a. Unlawful to Practice Without License**

It shall be unlawful for any person to practice, or offer to practice, dentistry in this State or hold himself out as practicing dentistry in this State without first having obtained a license from the State Board of Dental Examiners. Said license must be signed by all the members of the Board and shall have imprinted thereon the official seal of the Board.

[1925 P.C.; Acts 1935, 44th Leg., p. 606, ch. 244, § 13; Acts 1953, 53rd Leg., p. 721, ch. 281, § 4.]

**Art. 4548b. Must Comply With Law**

No person shall extract teeth or perform any other operation pertaining to dentistry or dental surgery for pay or for the purpose of advertising, exhibiting or selling any medicine or instrument, unless such person shall first have complied with the provisions of the law regulating the practice of dentistry in this State.

[1925 P.C.]

**Art. 4548c. Practice After License Has Been Revoked**

No person whose license to practice dentistry in this State shall be revoked by any district court of this State shall practice or attempt to practice dentistry or dental surgery in this State after such license has been so revoked.

[1925 P.C.]

**Art. 4548d. Shall Exhibit License**

Any person authorized to practice dentistry or dental surgery in this State either under this or any former law of Texas, shall place his

license on exhibition in his office where said license shall be in plain view of patients. No such person shall do any operation in the mouth of a patient, or treat any lesions of the mouth or teeth, without having said license so exhibited.

[1925 P.C.]

**Art. 4548e. Use of Own Proper Name Instead of Corporate or Trade Name; Practice as Partnership**

It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name; or under any name except his own proper name, which shall be the name used in his license as issued by the State Board of Dental Examiners. It shall be unlawful for any person or persons to operate, manage, or be employed in any room, rooms, office, or offices where dental service is rendered or contracted for under the name of a corporation, company, association, or trade name, or in any other name than that of the legally qualified dentist or dentists actually engaged in the practice of dentistry in such room, rooms, office, or offices; provided, however, this shall not prevent two or more legally qualified dentists from practicing dentistry in the same offices as a firm, partnership, or as associates in their own names as stated in licenses issued to them. Provided, however, that any dentist practicing under his own license may be employed by any person, firm or partnership practicing dentistry under licenses issued to them. Each day of violation of this Article shall constitute a separate offense.

[1925 P.C.; Acts 1935, 44th Leg., p. 606, ch. 244, § 15; Acts 1937, 45th Leg., p. 1346, ch. 501. § 1.]

**Art. 4548f. Unlawful Advertising**

**Violation of Regulations as to Practice of Dentistry**

Sec. 1. It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements as to the skill or method of practicing dentistry of any person through the means of letters, bills, posters, circulars, cards, stereopticon slides, motion pictures, radios, newspapers, or other advertising agencies or devices; or in any way or manner whatsoever to fraudulently advertise that a given person is able to practice dentistry or render dental service without causing pain; or to fraudulently advertise in any manner or way that will tend to deceive the public, or to fraudulently claim superiority over other dental practitioners; or to publish or circulate for advertising purposes fraudulent reports of cases or fraudulent statements of patients in any manner or to circulate same in any other way whatsoever; or to fraudulently advertise that he is using any anesthetic, drug, formula, medicine, method or system which is either falsely advertised or misbranded; or to fraudulently advertise willingness to render free dental services or examinations; or to fraudulently

advertise the prices or fees that any such person or persons is, or are willing, or proposes or propose, to charge for service or services in the practice of dentistry; or to fraudulently employ any person or persons to obtain or solicit patronage; or to fraudulently exhibit or use specimens of dental work, posters or any other advertising means directing the attention of the public to any such person or persons engaged in the practice of dentistry; or to fraudulently give a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage; provided, that any duly licensed practitioner of dentistry may publicly announce by way of newspaper or professional card that he is engaged in the practice of dentistry, giving the kinds or classes of work that he does and his name, degree, office location, office hours, telephone numbers and residence address; and if he limits his practice to a specialty he may state same; provided however, nothing herein shall apply to the owner, agents or employees of a newspaper, magazine, telephone directory, television or radio broadcast station, billboard company, or any other advertising media where any advertisement or solicitation in violation of this Act is published, exhibited or disseminated unless the party or parties who accepted, published, exhibited or disseminated same have actual notice of such false, deceptive, misleading or unlawful acts or practice, or had at the time of such advertising, exhibiting or soliciting, financial interest in the sale or distribution of the unlawfully advertised goods or services.

**Prohibiting Advertising of Out-of-State Practice of Dentistry**

Sec. 2. It shall be unlawful for any person, firm or corporation to advertise in this state or cause or permit to be advertized, published directly or indirectly, printed or circulated in this state any notice, statement or offer of, any service, skill, method, drug or fee in the practice of dentistry by any person, firm or corporation, which is not domiciled and located in this state and subject to the laws of this state. [Acts 1935, 44th Leg., p. 606, ch. 244, § 16; Acts 1973, 63rd Leg., p. 1697, ch. 617, § 1, eff. June 15, 1973.]

**Art. 4548g. Unprofessional Conduct**

It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct in the practice of dentistry, directly or indirectly. Any "unprofessional conduct," as used herein, means and includes any one or more of the following acts, to wit:

- (a) Employing "Cappers" or "Steerers" to solicit and/or obtain business;
- (b) Obtaining any fee by fraud or misrepresentation;
- (c) Employing directly or indirectly or permitting any unlicensed person to perform dental services upon any person in any room or office under his or her control;

(d) Circulate any statements as to the skill or method or<sup>1</sup> practicing dentistry of any person through the means of bills, posters, circulars, cards, stereopticon slides, motion pictures, radios, newspapers, or other advertising agencies or devices;

(e) Making use of any advertising statements of a character tending to mislead or deceive the public;

(f) Advertising professional superiority or the performance of professional services in a superior manner;

(g) Advertising prices for professional services in the practice of dentistry, or comparative values thereof;

(h) Advertising bargains, cut rates, or special values in dental services or productions with or without specifying the time they shall apply;

(i) Advertising any free dental work or free examination;

(j) Advertising to guarantee any dental services;

(k) Advertising to perform any dental operation painlessly;

(l) Publishing or circulating reports of cases or statements of patients in any newspaper, or to circulate same in any other way whatsoever;

(m) Advertising by any means, the using of any anaesthetic, drug, formula, medicine, method, or system;

(n) Employing any person or persons to obtain, contract for, sell or solicit patronage, or making use of free publicity press agents;

(o) Advertising by means of a display advertisement, display signs or glaring light signs, electric or neon signs, or such signs containing as a part thereof the representation of a tooth, teeth, bridgework, plates of teeth or any portion of the human head, or using specimens of such in display, directing the attention of the public to any such person or persons engaged in the practice of dentistry;

(p) Advertising dental plates, or restorations, or the materials used in the construction, under any fictitious, fancy, or unscientific names unapproved by the dental profession, or manufacturers of such materials and which cannot be identified by the patient;

(q) Advertising to the public any commercial dental laboratory or dental clinic;

(r) Giving a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage;

(s) Forging, altering, or changing any diploma, license, registration certificate, transcript, or any other legal document pertaining to the practice of dentistry, being a party thereto, or beneficiary therein, or making any false statement about or

in securing such document, or being guilty of misusing the same.

(t) Using any photostat, copy, transcript, or any other representation in lieu of a diploma, license, or registration certificate as evidence of authority to practice dentistry.

Provided, that any duly licensed practitioner of dentistry may publicly announce by way of newspaper or professional card that he is engaged in the practice of dentistry, giving his name, degree, office, location where he is actually engaged in practice, office hours, telephone numbers and residence address; and if he limits his practice to a specialty, he may state same.

[Acts 1937, 45th Leg., p. 1346, ch. 501, § 2; Acts 1947, 50th Leg., p. 752, ch. 371, § 4.]

<sup>1</sup> Should probably read "of" as prior to the amendment.

#### Art. 4548h. Refusal, Revocation, Cancellation or Suspension of License.

Sec. 1. [Amends article 4548e]

Sec. 2. [Added article 4548g]

##### Authority to Grant License

Sec. 3. The State Board of Dental Examiners shall be and they are hereby authorized to refuse to grant a license to practice dentistry to any person or persons who have been guilty, in the opinion of said Board, of violating any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry, or any provisions of Chapter 7 of Title 12 of the Penal Code of the State of Texas,<sup>1</sup> within twelve (12) months prior to the filing of an application for such license.

<sup>1</sup> See, now, article 4546a et seq.

##### Revocation, Cancellation or Suspension of License

Sec. 4. The State Board of Dental Examiners shall, and it shall be their duty, and they are hereby authorized to revoke, cancel or suspend any license or licenses that may have been issued by such Board, if in the opinion of a majority of such Board, any person or persons to whom a license has been issued by said Board to practice dentistry in this State, shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry in this State, or any of the provisions of Chapter 7, Title 12 of the Penal Code of the State of Texas, or any amendments that may hereafter be made thereto. All revocations, cancellations or suspensions of licenses by the Texas State Board of Dental Examiners shall be made as hereinafter provided.

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and Penal Code and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes or Penal Code.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or Penal Code. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or Penal Code.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the Board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes and Penal Code, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena and compel the attendance of such licensees or other persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority of the Board the facts brought out at such hearing justify and require. Provided, however, that any order cancelling or revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing. Provided that when the license of such licensee is revoked or cancelled he shall be allowed to continue the practice of his pro-

fession pending appeal upon his giving a supersedeas bond in such amount as shall be set by the District Court, conditioned to faithfully observe the law.

#### Appeal to Court

Sec. 5. If said Board shall make and enter any order cancelling or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so cancelled and revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the county in which the alleged offense occurred by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the State Board of Dental Examiners, as defendant. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in cancelling or revoking or suspending such license or licenses is not well taken or that same would or might deprive such licensee unjustly of his license to practice dentistry in this State, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court shall sustain such action of said Board in cancelling and revoking or suspending such license or licenses, an order shall be made and entered in appropriate form sustaining and affirming the action of such Board, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes. If no appeal be taken from such order of such Court within thirty (30) days, the same shall become final. If an appeal be taken from the District Court to a Court of Civil Appeals, the order of such Court shall become final within thirty (30) days after the making and entry of such order by such Court of Appeals. Provided in all such cases of appeal that the Court shall give preference to same, and advance them on the docket of said Court so that speedy action may be had; providing also that trial in the District Court shall be de novo.

#### Additional Offices

Sec. 6. This Act shall not be intended to prohibit any duly authorized, licensed and registered dentist from maintaining one additional office in any town or city other than the town of his residence.

## Penalty

Sec. 7. Repealed by Acts 1943, 48th Leg., p. 576, ch. 340, § 8.

## Provisions Cumulative; Conflicting Laws Repealed

Sec. 8. This Act shall be cumulative of all laws now in effect providing for the revoking, cancelling or suspending of licenses for the practice of dentistry or dental surgery in this State, except in so far as the provisions hereof may conflict with other laws now in effect. And all laws or parts of laws in conflict herewith are hereby repealed.

[Acts 1937, 45th Leg., p. 1346, ch. 501; Acts 1943, 48th Leg., p. 576, ch. 340, § 8; Acts 1947, 50th Leg., p. 752, ch. 371, § 3; Acts 1949, 51st Leg., p. 771, ch. 415, § 1; Acts 1951, 52nd Leg., p. 427, ch. 267, § 1.]

## Art. 4548i. Punishment

Any person who shall violate any provision of this Chapter<sup>1</sup> or of Chapter Nine of the Revised Civil Statutes of Texas, as amended, shall be fined not less than One Hundred Dollars (\$100), nor more than One Thousand Dollars (\$1,000), or be confined in jail from one (1) to twelve (12) months or both. Each day of such violation shall be a separate offense.

[1925 P.C.; Acts 1935, 44th Leg., p. 606, ch. 244, § 17; Acts 1943, 48th Leg., p. 576, ch. 340, § 6; Acts 1953, 53rd Leg., p. 721, ch. 281, § 3.]

<sup>1</sup> See, now, article 4546a et seq.

## Art. 4548j. Accomplice Testimony

Upon a trial or hearing for the violation of any of the Articles or provisions of the Penal Code or Civil Statutes of Texas, or any additions or amendments thereto, pertaining to dentistry, the uncorroborated testimony of an accomplice shall be sufficient to support and sustain a conviction.

[Acts 1949, 51st Leg., p. 771, ch. 415, § 2; Acts 1951, 52nd Leg., p. 427, ch. 267, § 4.]

## Art. 4549. Refusing Examination or License; Revocation of license

The Texas State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a license to any person for any one or more of the following causes:

- (a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license.
- (b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.
- (c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry.
- (d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

The Texas State Board of Dental Examiners and the District Courts of this State shall have concurrent jurisdiction and authority, after notice and hearing as hereinafter provided, to suspend or revoke a dental license for any one or more of the following causes:

- (a) Proof of insanity of the holder of a license, as adjudged by the regularly constituted authorities.
- (b) Proof of conviction of the holder of a license of a felony involving moral turpitude under the laws of this State or any other State or of the United States.
- (c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry.
- (d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.
- (e) That the holder thereof procured a license through fraud or misrepresentation.
- (f) That the holder thereof is addicted to habitual intoxication or the use of drugs.
- (g) That the holder thereof employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.
- (h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.
- (i) That the holder thereof has failed or refused to comply with any of the provisions of this Act.
- (j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

Proceedings to suspend or revoke a dental license on account of any one or more of the causes set forth in this Article shall be taken as follows:

- (a) Proceedings before the Texas State Board of Dental Examiners shall be as follows:

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of

all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the Board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena and compel the attendance of such licensees or other persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its

minutes, as in the opinion of the majority of the Board the facts brought out at such hearing justify and require. Provided, however, that any order revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing.

If said Board shall make and enter any order revoking or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the County of the residence of the person or persons whose license shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in revoking or suspending such license or licenses is not well taken, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court or jury shall sustain such action of said Board in revoking or suspending such license or licenses an order shall be made and entered in appropriate form sustaining and affirming the action of such Board; provided, however, that the person or persons whose license shall have been so revoked or suspended may waive the impanelling of a jury, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes.

(b) Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member

of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to show cause why his license to practice dentistry in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least ten (10) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) men shall be summoned as in cases during term time of the Court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of costs, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, ch. 244, § 6; Acts 1941, 47th Leg., p. 1336, ch. 605, § 1; Acts 1951, 52nd Leg., p. 427, ch. 267, § 2.]

**Art. 4549a. False or Misleading Statements to Patients Prohibited; Posting of School Diploma**

Provided further, that it shall be unlawful for any dentist, as defined in this Act, in the practice of dentistry to make any oral or other misrepresentation, or false or misleading statement to any patient or prospective patient within the office of such dentist or out of it; and, provided further, that each dental office

shall have posted at or near the entrance thereof, the name, the degree or degrees, and the school or schools attended of each dentist who is practicing or offering to practice said profession in said office.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 7.]

**Art. 4550. Record of Board**

Said Board shall keep a record in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry or dental surgery in this State.

[Acts 1925, S.B. 84.]

**Art. 4550a. Application, Registration Fund, and Secretary**

1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of dentistry in this State, or who shall hereafter be licensed for such practice by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee of not less than Twelve Dollars (\$12) nor more than Fifty Dollars (\$50) as determined by said Board according to the needs of said Board, such payment to be made by each licensee to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant is a duly licensed practitioner of dentistry in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice dentistry within the State of Texas unless he has in fact been previously licensed as such practitioner by the State Board of Dental Examiners, as provided by this law, and has duly recorded his license in the county or counties in which the same may be required by law to be recorded, and unless said license is in full force and effect; and provided further, that in any prosecution for the unlawful practice of dentistry such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice dentistry.

2. If any person required to register as a practitioner of dentistry under the provisions hereof shall fail or refuse to apply for such registration and pay such fee on or before March 1st of each calendar year, as hereinabove set forth, his license to practice dentistry



ry, issued to him, shall thereafter stand suspended so that thereafter in practicing dentistry, he shall be subject to the penalties imposed by law upon any person unlawfully practicing dentistry. Provided, that such license shall be reinstated at any time within three years upon written application of the holder made to said Board with such information or facts which the Board may require, accompanied by the payment of the annual registration fees in arrears and an additional fee of Five Dollars (\$5). Any license or certificate issued by the Texas State Board of Dental Examiners shall be subject to cancellation for failure to pay all annual registration fees required by law where such license or certificate holder shall have failed to register and pay such fees for three consecutive years. A revocation to be valid for failure to pay such fees shall be based upon written notice to such person at his last known address not less than 90 days prior to the date of hearing and intended cancellation if not so paid. Upon such cancellation the Board, in its discretion in each instance, may reinstate such person's license or certificate upon an affirmative showing by such person that he or she has the degree of professional skill and knowledge currently required of such licensees or certificate holders, and that such person is not mentally or physically incompetent and has not been guilty of any immoral or unprofessional conduct. Provided, however, that the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to licensees who are on active duty with the Armed Forces of the United States of America, and are not engaged in private or civilian practice.

3. All annual registration fees collected by the State Board of Dental Examiners under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Dental Registration Fund," and all expenditures from this fund shall be on order of the State Board of Dental Examiners, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in the General Appropriations Bills. The State Board of Dental Examiners shall be authorized to employ and to compensate from such special funds employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all laws of the State prohibiting the unlawful practice of dentistry, and to carry out the other purposes for which said fund is hereby appropriated. Provided, that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

4. To aid the Board in performing the duties prescribed in this Section, the Board is

hereby authorized to employ an Executive Secretary who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars (\$5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such other employees as may be needed to assist the Executive Secretary in performing his duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President and Secretary of said Board and upon warrants drawn by the Comptroller to be paid out of said fund.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 8; Acts 1943, 48th Leg., p. 576, ch. 340, § 3; Acts 1947, 50th Leg., p. 752, ch. 371, § 2; Acts 1961, 52nd Leg., p. 1101, ch. 496, §§ 2, 5, eff. June 17, 1961; Acts 1971, 62nd Leg., p. 1391, ch. 375, §§ 2, 3, eff. Aug. 30, 1971.]

#### Art. 4550b. Expiration Dates of Registrations; Proration of Fees

The board by rule may adopt a system under which registrations expire on various dates during the year. Dates of license suspension and reinstatement after failure to pay the registration fee shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before March 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new registration date, the total registration fee is payable.

[Acts 1973, 63rd Leg., p. 629, ch. 266, § 29, eff. June 11, 1973.]

#### Art. 4551. Fees and Expenses

Each member of the State Board of Dental Examiners, also known and referred to as the Texas State Board of Dental Examiners, shall receive for his service Fifty Dollars (\$50) per day for each day he is actually engaged in the duties of his office together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses accruing hereunder shall be paid from moneys received by said Board from the "Dental Registration Fund" as provided in this law; no money shall ever be paid to any member of the Board from the General Fund.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 606, ch. 244, § 9; Acts 1957, 55th Leg., p. 755, ch. 312, § 8; Acts 1971, 62nd Leg., p. 1393, ch. 375, § 4, eff. Aug. 30, 1971.]

### Art. 4551a. Persons Regarded as Practicing Dentistry

Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D. D. S.," "Doctor of Dental Medicine," "D. M. D.," or any other letters, title, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself, and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth any dental appliance, structure, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth any dental appliance, structure or denture.

(6) Who makes, fabricates, processes, constructs, produces reproduces, dupli-

cates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States Mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentists.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 10; Acts 1943, 48th Leg., p. 576, c. 340, § 4; Acts 1951, 52nd Leg., p. 427, ch. 267, § 5; Acts 1953, 53rd Leg., p. 721, ch. 281, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 97, ch. 46, § 1; Acts 1959, 56th Leg., p. 668, ch. 309, § 4.]

### Art. 4551a-1. Persons Regarded as Practicing Dentistry

Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, operate, or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the

diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth any dental appliance, structure, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth any dental appliance, structure or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentists.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 18; Acts 1943, 48th Leg., p. 576, ch. 340, § 7; Acts 1951, 52nd Leg., p. 427, ch. 267, § 6; Acts 1953, 53rd Leg., p. 721, ch. 281, § 2; Acts 1954, 53rd Leg., p. 97, ch. 46, § 2; Acts 1959, 56th Leg., p. 668, ch. 309, § 5.]

#### Art. 4551b. Exceptions

The definition of dentistry as contained in Chapter 9 of Title 71, of the Revised Civil Statutes of Texas as amended,<sup>1</sup> shall not apply to

(1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college; or to

(2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college; or to

(3) Persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or to

(4) physicians and surgeons legally authorized to practice medicine as defined by the law of this state; or to

(5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to

(6) those persons who as members of an established church practice healing by prayer only; or to

(7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state; or to

(8) Dental Health Service Corporations legally chartered under Subsection (1) of Article 2.01, of the Texas Nonprofit Corporation Act;<sup>2</sup> or to

(9) dental interns, dental residents and dental assistants as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations.

Nothing in this Act applies to one legally engaged in the practice of dentistry in this state at the time of the passage of this law, except as hereinbefore provided.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 11; Acts 1951, 52nd Leg., p. 427, ch. 267, § 7; Acts 1953, 53rd Leg., p. 721, ch. 281, § 5; Acts 1957, 55th Leg., p. 755, ch. 312, § 7; Acts 1961, 57th Leg., p. 959, ch. 418, § 3; Acts 1969, 61st Leg., 2nd C.S., p. 112, ch. 7, § 2, eff. Sept. 19, 1969.]

<sup>1</sup> Article 4543 et seq.

<sup>2</sup> Article 1396-2.01, § A(1).

#### Art. 4551b-1. Exceptions

The definition of dentistry as contained in Chapter 7, of Title 12, of the Revised Penal Code of Texas, as amended,<sup>1</sup> shall not apply to:

(1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college; or to

(2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college; or to

(3) persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or to

(4) physicians and surgeons legally authorized to practice medicine as defined by the law of this state; or to

(5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to

(6) those persons who as members of an established church practice healing by prayer only; or to

(7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state; or to

(8) Dental Health Service Corporations legally chartered under Subsection (1) of Article 2.01, of the Texas Nonprofit Corporation Act;<sup>2</sup> or to

(9) dental interns, dental residents and dental assistants as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations.

Nothing in this Act applies to one legally engaged in the practice of dentistry in this state at the time of the passage of this law, except as hereinbefore provided.

[1925 P.C.; Acts 1943, 48th Leg., p. 576, ch. 340, § 5; Acts 1951, 52nd Leg., p. 427, ch. 267, § 3; Acts 1953, 53rd Leg., p. 721, ch. 281, § 6; Acts 1957, 55th Leg., p. 755, ch. 312, § 6; Acts 1961, 57th Leg., p. 959, ch. 418, § 2, eff. Aug. 28, 1961; Acts 1969, 61st Leg., 2nd C.S., p. 56, ch. 7, § 3, eff. Sept. 19, 1969.]

<sup>1</sup> See, now, article 4546a et seq.

<sup>2</sup> Article 1396-2.01, § A(1).

#### Saved from Repeal

*Section 6 of Acts 1959, 56th Leg., p. 668, ch. 309, regulating acts and services of dental technicians and laboratories, repealed conflicting laws and parts of laws, except this article.*

#### Art. 4551c. Restraining Practice in Violation of Law

The actual practice of dentistry in violation of the laws of this State shall be enjoined at the suit of the State. In such suits for injunction it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may or is about to be, so unlawfully practicing dentistry in this State may be made a party defendant in said suit, which must be filed in the county in which defendant is practicing or threatening to practice dentistry. The Attorney General, the District Attorney of the district or the County Attorney of the county in which the unlawful acts complained of are taking place shall have the authority and it shall be their duty and the duty of each of them, to file such suits and to represent the State therein. If on final trial it be shown that the defendant has been unlawfully practicing dentistry or is about to practice dentistry unlawfully the court shall, by injunction, permanently enjoin the defendant from practicing or continuing the practice of dentistry in violation of law; and disobedience of said injunction shall subject the defendant to the penalties provided by law for violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution and cumulative of all other remedies provided for the prevention of the unlawful practice of dentistry. Such causes shall be advanced for trial on the docket of the trial court and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as are applicable to other suits for injunction.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 12; Acts 1953, 53rd Leg., p. 721, ch. 281, § 7.]

#### Art. 4551d. Rules and Regulations of Board

The Texas State Board of Dental Examiners is hereby authorized and empowered to adopt, promulgate, and enforce such rules and regulations as the Board may deem necessary and advisable to prescribe and maintain standards of professional conduct of those persons under the jurisdiction of the Texas State Board of Dental Examiners and to protect the public health and welfare. Such rules and regulations may define and regulate the acts and areas of practice and govern the relationship between and the activities of licensed dentists, dental hygienists, and dental assistants, and their relationship to other branches of the healing arts and to or with the public, and make such other rules and regulations as the Board may deem advisable to protect and to foster the public health and welfare; however, notice must be given at least ten (10) days in advance of any meeting called by the Board to consider the adoption of any rule, or regulation, or change therein; such notice as herein provided for shall be accomplished by publication at least once in a newspaper having general circulation in the State of Texas; and be-

fore any rule, regulation or change therein is adopted, promulgated or enforced, it shall be submitted to the Attorney General of the State of Texas for review as to its legality.

[Acts 1951, 52nd Leg., p. 427, ch. 267, § 8; Acts 1971, 62nd Leg., p. 1741, ch. 508, § 1, eff. Aug. 30, 1971.]

#### Art. 4551d(1). Dental Laboratories and Technicians; Rules and Regulations

The Texas State Board of Dental Examiners shall have the same power and authority to adopt, promulgate and enforce rules and regulations consistent with statutory and constitutional authority pertaining to dental laboratories and dental technicians, including classes of technicians, qualifications, standards, and examination for registration and as is contained in Article 4551d, after the Texas State Board of Dental Examiners has received the recommendations of the Dental Laboratory Advisory Board.

[Acts 1973, 63rd Leg., p. 128, ch. 65, § 1, eff. Aug. 27, 1973.]

#### Art. 4551e. Dental Hygienists; Regulation and Licensing

##### Definitions

Sec. 1. The term "dental hygiene," and the practice thereof as used in this Act shall mean and is hereby defined as

(a) the removal of accumulated matter, tartar, deposits, accretions or stains, except mottled enamel stains, from the natural and restored surfaces of exposed human teeth, and restorations therefor in the human mouth and the polishing of said surfaces;

(b) the making of topical application of drugs to the surface tissues of the human mouth and to the exposed surface of human teeth;

(c) the making of Dental X-rays; and

(d) such other services and procedures as may be prescribed by the Texas State Board of Dental Examiners in its Rules and Regulations.

The term "dental hygienist," as used in this Act shall mean and is hereby defined as a person who practices "dental hygiene."

##### Qualifications

Sec. 2. A dental hygienist shall be not less than twenty (20) years of age, a citizen of the United States of America, a graduate of an accredited high school and of a recognized and accredited school or college of dentistry or dental hygiene approved by the Texas State Board of Dental Examiners in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations pro-

mulgated by the Texas State Board of Dental Examiners.

##### Supervision

Sec. 3. All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, by whom he or she must be employed, except where employed by schools, hospitals, state institutions, or public health clinics approved by the Texas State Board of Dental Examiners. It shall be unlawful for more than one dental hygienist to practice dental hygiene for one dentist at any one time, and it shall be unlawful for a dentist legally engaged in the practice of dentistry in this state to employ, under any contractual relationship whatsoever, more than one dental hygienist to practice dental hygiene at any one time. No dental office, regardless of the number of dentists practicing or offering to practice dentistry in such office, shall have employed under any contractual relationship whatsoever more than two (2) dental hygienists to practice dental hygiene therein.

##### Governing Board

Sec. 4. The Texas State Board of Dental Examiners is hereby designated and empowered as the official state agency on all matters concerning dental hygienists and the practice of dental hygiene, and it shall be the duty of such Board to administer the provisions of this Act. The Board shall also adopt, promulgate and enforce all rules and regulations, including rules of professional conduct for dental hygienists, as the Board may deem necessary and advisable and not inconsistent with the provisions hereof, but to carry out the purposes of this Act and for its enforcement.

##### Examination

Sec. 5. The Texas State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for certification as dental hygienists in this State. All applicants for examination shall pay a fee of Thirty-five Dollars (\$35) to said Board and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill

or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a certificate permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

#### Renewal of Certificate, Fee

Sec. 6. It shall be the duty of each dental hygienist in this State to annually apply to the Texas State Board of Dental Examiners for renewal of his certificate granted him by said Board, and to pay, in the manner and within the time prescribed by the Board in its rules and regulations in connection with such application for renewal, a fee of not less than Ten Dollars (\$10) nor more than Twenty-five Dollars (\$25) as determined by said Board according to its needs. Upon the payment of such fee as prescribed by the Board, each dental hygienist shall receive a renewal of his certificate as a receipt for such payment, and the absence of such renewed certificate shall be prima facie evidence of the want of possession of such certificate before the Board and in any court in the State.

Dental hygienists, required to register under this Act, who fail or refuse to register and pay the annual registration fee in the manner and within the time prescribed shall not thereafter practice dental hygiene in this State, and during such time of said person's failure or refusal to register and renew his certificate and to pay the required fee, he shall be subject to the same penalties imposed by law upon any person unlawfully practicing dental hygiene. Such person may, in the discretion of the Board in each instance, be reinstated and permitted to register and renew his certificate within three years upon written application to such Board. Such application shall contain all facts and information which the Board may require and must be accompanied by the payment of all annual registration fees in arrears together with an additional fee of Five Dollars (\$5). Any certificate issued by the Texas State Board of Dental Examiners shall be subject to cancellation for failure to pay all annual registration fees required by law where such certificate holder shall have failed to register and pay such fees for three consecutive years. A revocation to be valid for failure to pay such fees shall be based upon written notice to such person at his last known address not less than 90 days prior to the date of hearing and intended cancellation, if not so paid. Upon such cancellation the Board, in its discretion in each instance, may reinstate such person's certificate upon an affirmative showing by such person that he or she has the degree of professional skill and knowledge currently re-

quired of such certificate holders, and that such person is not mentally or physically incompetent and has not been guilty of any immoral or unprofessional conduct. However, the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to certificate holders who are on active duty with the Armed Forces of the United States of America and are not engaged in private or civilian practice.

#### Deposit of Funds

Sec. 7. All fees collected by the Texas State Board of Dental Examiners under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of the special fund known as the "Dental Registration Fund," and all expenditures from this fund of monies collected under this Act shall be on order of the Texas State Board of Dental Examiners on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature; except, however, for the first biennium from and after the effective date of this Act, the Texas State Board of Dental Examiners shall have power and authority to receive, collect and to expend all such funds for the administration and enforcement of this Act.

#### Grandfather Clause

Sec. 8. Within ninety (90) days from and after the effective date of this Act, and not thereafter, any person of good moral character who is a citizen of the United States of America, a bona fide resident of the State of Texas, and who has been employed for a period of ten (10) years during the twelve (12) year period next preceding the effective date of this Act in the dental office of a dentist or dentist legally engaged in the practice of dentistry in this State, shall be permitted upon payment of the fee required by law to apply for and must, within two (2) years after the effective date of this Act, take and pass successfully the examination given by the Board to determine the qualifications of applicants for license as dental hygienists and to practice dental hygiene in this State. All applicants under this section shall furnish evidence satisfactory to the Board to support the claims and statements contained in such application.

#### Refusing Examination

Sec. 9. The Texas State Board of Dental Examiners shall have power and authority to refuse to examine any applicant or refuse to issue an original certificate or any requested renewal thereof to any person for any one or more of the following reasons:

(a) Presentation to the Board of proof of any dishonest or fake evidence of qualification or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

#### Revocation and Cancellation of Certificates

Sec. 10. The Texas State Board of Dental Examiners and the District Courts of this State shall have concurrent jurisdiction and authority, after notice and hearing as herein-after provided, to suspend or revoke a certificate to practice dental hygiene in this State for any one or more of the following causes:

(a) Proof of insanity of the holder of a certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a certificate of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonest or illegal practices in or connected with dentistry or dental hygiene or has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dental hygiene.

(d) That the holder thereof has been or is guilty of advertising or soliciting patronage in any manner.

(e) That the holder thereof procured a certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual or chronic intoxication or the use of drugs.

(g) That the holder thereof has practiced dental hygiene other than (1) as an employee of and in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, or (2) as an employee of schools, hospitals, state institutions, or public health clinics approved by the Texas State Board of Dental Examiners.

(h) That the holder thereof has practiced or offered to practice dental hygiene in any place where the number of dental hygienists practicing or offering to practice dental hygiene exceeds the number permitted by law.

(i) That the holder thereof has failed to use proper diligence in the practice of dental hygiene or has been grossly inefficient therein.

(j) That the holder thereof permits or has permitted his or her name to appear on any door, window, stationery, sign, placard, professional card or other advertising media or to allow his or her name to be used in any manner by any advertising media.

(k) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(l) That the holder thereof has failed or refused to comply with any of the laws of this State pertaining to dentistry or the provisions of this Act.

#### Proceedings, Board and Court

Sec. 11. Proceedings to suspend or revoke a certificate for the practice of dental hygiene on account of any one or more of the causes set forth in this Article shall be taken as follows:

(a) Proceedings before the Texas State Board of Dental Examiners shall be as follows:

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes, or rules and regulations of the Board, and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes or rules and regulations of the Board.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person, under the jurisdiction of the Texas State Board of Dental Examiners, charged with having violated such Statutes or rules and regulations of the Board. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case; and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such

docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules and regulations of the Board.

The Secretary of the Board or its authorized officer or employee shall not less than (10) days prior to the next meeting of the Board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes or rules and regulations of the Board, and shall state that such accused person may appear and offer such evidence as is pertinent to his or her defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena, and compel the attendance of such persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority of the Board the facts brought out at such hearing justify and require. Provided, however, that any order revoking or suspending such certificate or certificates shall be signed by a majority of such Board and by all the members of such Board present at such hearing.

If said Board shall make and enter any order revoking or suspending any certificate or certificates as hereinabove provided, the person or persons whose certificate shall have been so revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the county of the residence of the person or persons whose certificate shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and

served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing. Upon the hearing of such cause, all orders of the Board shall be valid if supported by substantial evidence and if such Court shall find that the action of such Board, in revoking or suspending such certificate or certificates, is based upon substantial evidence as provided by law, such Court shall by appropriate order and judgment affirm and sustain such action of said Board; but if such Court shall find that such action of said Board in revoking or suspending such certificate or certificates is not based upon substantial evidence, then an order shall be made and entered in appropriate form setting aside the action of such Board.

(b) Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute or rules and regulations of the Board. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the clerk of the Court. The Court, upon the filing of said complaint, shall order the accused certificate holder to show cause why his or her certificate to practice dental hygiene in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least ten (10) days before the trial date set therein. Upon the return of said citation executed, if



the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) men shall be summoned as in cases during term time of the Court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused certificate holder be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the court may, by proper order entered on the minutes, suspend his or her certificate for a time or revoke and cancel it entirely and may also give proper judgment of costs, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

**Records, Change of Address**

Sec. 12. It shall be the duty of the Texas State Board of Dental Examiners to keep a record of all certificates issued and renewed as provided for in this Act, and it shall be the duty of each dental hygienist authorized to practice dental hygiene in this State to notify the Board of any change of address or location of his or her office or place of practicing dental hygiene and to notify such Board of any change in his or her employment or supervision in the practice of dental hygiene in this State.

The certificate provided for in this Act shall be kept prominently displayed in the office or room where such dental hygienist practices or offers to practice dental hygiene.

**Certificate Required; Practice Under Name Only**

Sec. 13. It shall be unlawful for any person to practice or offer to practice dental hygiene in this State without having first obtained a certificate so to do from the Texas State Board of Dental Examiners authorized to grant such certificate, or to practice or offer to practice dental hygiene under any name other than that appearing on such previously granted or renewed certificate.

**Accomplice Testimony**

Sec. 14. Upon a trial or hearing for the violation of any of the provisions of this Act the uncorroborated testimony of an accomplice shall be sufficient to sustain and support a conviction.

**Exceptions**

Sec. 15. The provisions of this Act shall not apply to:

- (1) dentists duly licensed and authorized to practice dentistry within this state and who are actively engaged in such practice except as provided in Section 3 of this Act;

- (2) physicians and surgeons legally authorized to practice medicine as defined by the law of this state; or

- (3) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state.

**Practice Not Violative of Dentistry Laws**

Sec. 16. Any person legally engaged in the practice of Dental Hygiene as defined in this Act shall not be considered in violation of the laws of Texas regulating the practice of dentistry.

**Courses of Study; Law Not Applicable to University School of Dentistry**

Sec. 17. Section 20 of Article 5, of House Bill No. 426, Acts of the Regular Session of the 52nd Legislature,<sup>1</sup> same being limitation on courses of study, is hereby declared not applicable to The University of Texas School of Dentistry.

<sup>1</sup> Acts 1951, 52nd Leg., p. 1469, ch. 499.

**Penalty**

Sec. 18. Any person who shall violate any provision of this Act shall be fined not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, to be confined in jail from one (1) month to one (1) year, or both. Each day of such violation shall be a separate offense.

**Repealer**

Sec. 19. All laws or parts of laws in conflict herewith are hereby repealed.

**Partial Invalidity**

Sec. 20. If any Article, section, sub-section, sentence, clause, phrase, word or combination of words of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sub-section, sentence, clause, phrase, word or combination of words hereof, irrespective of the fact that any one or more of the sections, sub-sections, sentences, clauses, phrases or words be declared unconstitutional.

[Acts 1951, 52nd Leg., p. 843, ch. 475; Acts 1957, 55th Leg., p. 755, ch. 312, §§ 1 to 5; Acts 1961, 57th Leg., p. 1101, ch. 496, § 4, eff. June 17, 1961; Acts 1969, 61st Leg., 2nd C.S., p. 112, ch. 7, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 1393, ch. 375, § 5, eff. Aug. 30, 1971.]

**Art. 4551f. Dental Technicians and Laboratories; Regulation of Acts and Services**

**Dental Technician; Definition**

- (1) A Dental Technician is any person who makes, assembles, fabricates, processes, constructs, creates, produces, reproduces, duplicates, repairs, relines, adjusts, or fixes, or who offers or undertakes in any manner, or who aids or abets or causes another person to offer, or undertake in any manner to make, assemble, fabricate, process, construct, create, produce,

reproduce, duplicate, repair, reline, adjust, or fix any prosthetic or orthodontic dental appliance, any full or partial denture, any fixed or removable dental bridge, any dental plate of false teeth, any artificial restoration, or any substitute or corrective device for the human teeth, gums, jaws, alveolar process or any part thereof; or who offers or undertakes in any manner, or who aids or abets or causes another person to offer or undertake in any manner, to fit any such dental appliance, denture, bridge, plate, false teeth, artificial restoration, or substitute, or corrective device for the human teeth, gums, or jaws, to or on any dental model, impression, or cast of the human teeth, gums, jaws, alveolar process or any part thereof.

**Dental Laboratory; Definition**

(2). A Dental Laboratory is any place where a person offers or undertakes to perform or accomplish any act or service listed in Section 1 of this Act.

**Necessity of Work-order or Prescription; Requisites; Filing; Inspection of Records**

(3). (a) It shall be unlawful from and after the effective date of this Act for a dental technician, or for an owner, manager or employee of a dental laboratory, to accept from or deliver to any person or place, or to aid or abet any person so to do, any article, material, or thing upon or with which any act or service listed in Section 1 of this Act is, will be, or has been offered, ordered, undertaken, or performed in any manner except to or from a dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where he actually maintains his dental office and engages in the practice of dentistry or to or from an employee of such dentist for and on behalf of such dentist only and unless such dental laboratory owner, manager, or technician has been furnished with a written work-order or prescription by such dentist which work-order or prescription shall contain the

- (1) signature and Dental License number of such dentist;
- (2) the date such was signed;
- (3) the name and address of the patient for whom the act or service is ordered;
- (4) a description of the kind and type of act, service, or material ordered.

Any farm-outs of the acts or services listed in Section 1 of this Act shall be accompanied by a written statement that such a prescription or work-order is on file in the laboratory originally receiving such order.

(b). It shall be the duty of each dental laboratory owner and manager to keep, for a period of two (2) years, the work-order or prescription furnished as hereinbefore required, in alphabetical order in a separate file or place at and on the premises of each such dental laboratory as a part of the records of such dental laboratory.

(c). During regular office hours the premises of each dental laboratory and all dental laboratory and dental technician records pertaining to work-orders, dentists' prescriptions, and farm-out records of each dental technician and of the owner or manager of each dental laboratory shall be open and available for inspection by the members, officers, employees, investigators, and agents of the Texas State Board of Dental Examiners for the purposes of enforcing the provisions of this Act.

**Transportation and Shipment of Dental Material**

(4). Nothing in this Act shall prohibit those who are subject to and in compliance with the provisions of this Act from using the services of the United States Mail, Railway Express Agency, Western Union, Messengers, or common or contract carriers to accept from, handle, ship, transport, or deliver to any dentist or another dental laboratory, any article, material, or thing in any form or state of completion upon or with which any act or service listed in Section 1 of this Act is, will be, or has been offered, ordered, undertaken, or performed in any manner.

**Exemption**

(5). A dentist legally engaged in the practice of dentistry in this state who performs for himself only any of the services listed in Section 1 of this Act shall be exempt from the provisions of this Act.

**Registration; Advisory Board; Offenses**

(6). (a) It shall be the duty of the owner, owners, and manager of each dental laboratory in this State to annually apply to and register each dental laboratory in this State with which he has any connection or interest with the Texas State Board of Dental Examiners on or before March 1 of each calendar year and to pay in connection with such application a fee of not less than \$25 nor more than \$200 as determined by the Board according to the needs of the Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require. It shall also be the duty of each dental laboratory technician registered pursuant to this Act and as provided by the Texas State Board of Dental Examiners in its rules and regulations to annually apply to and to register with the Texas State Board of Dental Examiners on or before March 1 of each calendar year, and to pay in connection with such application a fee of not less than \$10 nor more than \$25 as determined by the Board according to the needs of said Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require; further, a list of all other employees of a dental laboratory who are not required to register hereunder shall be furnished quarterly to the Texas State Board of Dental Examiners and to the Dental Laboratory Advisory Board as provided in the rules of the Board.

(b) There is hereby created the Dental Laboratory Advisory Board which shall be composed of six members appointed by the Texas State Board of Dental Examiners from the dental laboratory owners or managers and dental technicians registered with the Board, four of whom shall be dental laboratory owners or managers and two of whom shall be dental laboratory technicians who are not dental laboratory owners or managers. The members of the Dental Laboratory Advisory Board shall serve six (6) year staggered terms and of the first members appointed to such Board, two shall serve for two (2) years, two shall serve for four (4) years and two shall serve for six (6) years; the length of each term of those initially appointed shall be designated by the Texas State Board of Dental Examiners at the time of appointment. The Dental Laboratory Advisory Board shall advise the Texas State Board of Dental Examiners on all matters concerning dental laboratories and dental technicians; and the Texas State Board of Dental Examiners shall refer to the Dental Laboratory Advisory Board all matters concerning rules, fees, registration and all other matters affecting dental laboratories and dental technicians for the Advisory Board's study and recommendations thereon and such Advisory Board shall forward its recommendations, within a reasonable time, to the Texas State Board of Dental Examiners for its action upon such recommendations; and, if the majority of the members of the Texas State Board of Dental Examiners shall concur with the recommendations of the Dental Laboratory Advisory Board, then the rules, regulations or changes therein pertaining to dental laboratories and dental technicians shall be put into effect by the Texas State Board of Dental Examiners as part of its rules and regulations. The members of the Dental Laboratory Advisory Board shall be entitled to receive the same per diem payable to the members of the Texas State Board of Dental Examiners plus such travel and other expenses as are incurred in the attendance of meetings of such Board. No practicing dentist shall be a member of the Dental Laboratory Advisory Board.

(c) From and after the effective date of this Act, it shall be unlawful for anyone other than a dental laboratory or dental technician duly registered hereunder, to fill any prescription for a dental prosthetic appliance or the repair thereof, to be delivered by a licensed dentist in this State to a dental patient.

(d) It shall be unlawful for any person, firm, association, corporation, or combination thereof to offer or undertake in any manner to operate a dental laboratory or to do or perform any of the acts described in this Article in this State without having first obtained a certificate from the Texas State Board of Dental Examiners so to do.

(e) The Board shall have the authority to commence in its name injunctive proceedings

to enjoin any person, firm, association, corporation, or combination thereof in violation of this Act.

(f) The Board may refuse to issue or to renew or may suspend or revoke any certificate or license provided in this Act where, after notice and hearing, it has been determined by the Board that any person requesting or possessing such license or certificate has violated any of the provisions of Chapter 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and the procedures to be followed in any complaint or disciplinary action, including the right of appeal for failure to issue or to renew or the suspension or revocation of a certificate or license hereunder, shall be those prescribed in Section 11, Chapter 475, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4551e, Vernon's Texas Civil Statutes).

[Acts 1959, 56th Leg., p. 668, ch. 309, § 1; Acts 1973, 63rd Leg., p. 128, ch. 65, § 2, eff. Aug. 27, 1973.]

<sup>1</sup> Article 4543 et seq.

Sections 3 to 5 of the 1973 Act provided:

"Sec. 3. The income received from fees authorized by this Act is hereby appropriated to the Texas State Board of Dental Examiners for the fiscal years ending 1974 and 1975 for its expenditure for the implementation of this Act and for the purposes listed in the General Appropriations Bill as passed by the 63rd Legislature.

"Sec. 4. All laws or parts of laws in conflict herewith are hereby repealed.

"Sec. 5. If any article, section, subsection, sentence, clause, phrase, word, or combination of words of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, phrase, word, or combination or words hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, phrases, or words be declared unconstitutional."

#### Art. 4551g. Prescription Required

From and after the effective date of this Act every dentist requiring the making, fabricating, processing, constructing, producing, reproducing, duplicating, repairing, relining, or fixing of any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof, shall prepare and deliver a prescription or work-order for same directed to the person, firm, or association, or other business entity which is to perform such work or service and such work-order or prescription shall contain

- (1) the signature and Texas dental license number of such dentist;
- (2) the date such was signed;
- (3) the name and address of the patient for whom the act or service is ordered; and
- (4) a description of the kind and type of act, service, or material ordered.

It shall be the duty of each dentist to keep a copy of each work-order or prescription for a period of two years, and maintain a separate file therefor in his dental office which shall be available for inspection by the officers, agents, or employees of the Texas State Board of Dental Examiners.

[Acts 1959, 56th Leg., p. 668, ch. 309, § 2.]

#### Art. 4551g-1. Prescription Required

From and after the effective date of this Act every dentist requiring the making, fabricating, processing, constructing, producing, reproducing, duplicating, repairing, relining, or fixing of any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof, shall prepare and deliver a prescription or work-order for same directed to the person, firm, or association, or other business entity which is to perform such work or service and such work-order or prescription shall contain

- (1) the signature and Texas dental license number of such dentist;
- (2) the date such was signed;
- (3) the name and address of the patient for whom the act or service is ordered; and
- (4) a description of the kind and type of act, service, or material ordered.

It shall be the duty of each dentist to keep a copy of each work-order or prescription for a period of two years, and maintain a separate file therefor in his dental office which shall be available for inspection by the officers, agents, or employees of the Texas State Board of Dental Examiners.

[Acts 1959, 56th Leg., p. 668, ch. 309, § 3.]

#### Art. 4551h. Narcotic drugs

It shall be unlawful for a dentist to prescribe, provide, obtain, order, administer, give, or deliver to or for any person, narcotic drugs not necessary or required, or where the use or possession of same would promote or further addiction thereto, or to aid, abet, or cause any of same to be done in any manner.

[Acts 1961, 57th Leg., p. 1101, ch. 496, § 1, eff. June 17, 1961.]

### CHAPTER TEN. OPTOMETRY

#### ARTICLE 1. GENERAL PROVISIONS

##### Article

- 4552-1.01 Short Title.  
4552-1.02 Definitions.

#### ARTICLE 2. TEXAS OPTOMETRY BOARD

- 4552-2.01 Board Created.  
4552-2.02 Qualifications of Members.  
4552-2.03 Terms of Office.  
4552-2.04 Organization of Board.

##### Article

- 4552-2.05 Meetings.  
4552-2.06 Records.  
4552-2.07 Committees.  
4552-2.08 Employees of Board.  
4552-2.09 Suit for Injunction.  
4552-2.10 Proceedings; Subpoenas; Oaths.  
4552-2.11 Bond of Secretary-Treasurer.  
4552-2.12 Seal; Design of License.  
4552-2.13 Office.  
4552-2.14 Rules and Regulations.  
4552-2.15 Disposition of Fees.

#### ARTICLE 3. EXAMINATIONS

- 4552-3.01 Must Pass Examination.  
4552-3.02 Application.  
4552-3.03 Fees.  
4552-3.04 Notice of Examination.  
4552-3.05 Subjects of Examination.  
4552-3.06 Conduct of Examination.  
4552-3.07 Those Passing Entitled to License.

#### ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

- 4552-4.01 Annual Renewal.  
4552-4.01A Expiration Dates of Licenses; Proration of Fees.  
4552-4.02 Renewal After Discharge From Military..  
4552-4.03 Lost or Destroyed License.  
4552-4.04 Revocation, Suspension, etc.

#### ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS

- 4552-5.01 Display of License.  
4552-5.02 Recordation of License.  
4552-5.03 Optometry Register.  
4552-5.04 Practice Without License; Fraud; House-to-House.  
4552-5.05 Treating Diseased Eyes.  
4552-5.06 Spectacles as Premiums.  
4552-5.07 Prescribing Without Examination.  
4552-5.08 Practice While Suffering from Contagious Disease.  
4552-5.09 Advertising by Optometrists.  
4552-5.10 Advertising by Dispensing Opticians.  
4552-5.11 Window Displays and Signs.  
4552-5.12 Basic Competence.  
4552-5.13 Professional Responsibility.  
4552-5.14 Lease of Premises from Mercantile Establishment.  
4552-5.15 Relationships with Dispensing Opticians.  
4552-5.16 Leasing Space on Percentage Basis; Transferring Accounts Receivable.  
4552-5.17 Exceptions.  
4552-5.18 Penalty.

#### ARTICLE 6. MISCELLANEOUS PROVISIONS

- 4552-6.01 Board of Examiners Abolished.  
4552-6.02 Severability.  
4552-6.03 Repealer.  
4552-6.04 Effective Date.

*Former Chapter 10, entitled Optometry, which consisted of articles 4552 to 4566-1, was repealed by Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.03 (art. 4552-6.03).*

*Articles 4552-1.01 to 4552-6.04, incorporated in Chapter 10, entitled Optometry, were enacted by Acts 1969, 61st Leg., p. 1298, ch. 401.*

**DISPOSITION TABLE**

The following table shows the disposition of the repealed articles of former chapter 10 in the new chapter 10.

Former Articles	New Articles
4552	4552-1.02
4553	4552-2.01, 4552-2.02
4554	4552-2.03
4555	4552-2.04, 4552-2.05
4556	4552-2.06 to 4552-2.14
4557	4552-3.01, 4552-3.02
4558	4552-3.05
4559	4552-3.04, 4552-3.06, 4552-3.07
4560	Repealed 1939
4561	4552-5.02
4562	4552-5.03
4563	4552-4.04
4564	4552-5.01
4565	4552-2.15, 4552-3.03
4565a	4552-4.01 to 4552-4.03
4565b	Repealed 1939
4565c	4552-1.02
4565d	4552-1.02
4565e	4552-1.02, 4552-5.17
4565f	4552-5.07, 4552-5.08
4565g	4552-5.10
4565h	4552-5.06
4566	4552-5.17
4566-1	4552-5.16

**ARTICLE 1. GENERAL PROVISIONS**

**Art. 4552-1.01. Short title**

This Act may be cited as the Texas Optometry Act.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 1.01, eff. Sept. 1, 1969.]

**Art. 4552-1.02 Definitions**

As used in this Act:

(1) The "practice of optometry" is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state. Nothing herein shall be construed to prevent selling ready-to-wear spectacles or eyeglasses as merchandise at retail, nor to prevent simple repair jobs.

(2) "Ascertaining and measuring the powers of vision of the human eye" shall be construed to include:

(A) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be

corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

(B) The employment of any objective or subjective means to determine the accommodative or refractive condition or the range or powers of vision of muscular equilibrium of the human eye, or

(C) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this subdivision; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this state.

(3) "Fitting lenses or prisms" shall be construed to include:

(A) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof; provided, however, that nothing in this Act shall be construed so as to prevent an ophthalmic dispenser, who does not practice optometry, from measuring interpupillary distances or from making facial measurements for the purpose of dispensing, or adapting ophthalmic prescriptions or lenses, products and accessories in accordance with the specific directions of a written prescription signed by a licensed physician or optometrist; provided, however, the fitting of contact lenses shall be done only by a licensed physician or licensed optometrist as defined by the laws of this state, but the lenses may be dispensed by an ophthalmic dispenser on a fully written contact lens prescription issued by a licensed physician or optometrist, in which case the ophthalmic dispenser may fabricate or order the contact lenses and dispense them to the patient with appropriate instructions for the care and handling of the lenses, and may make mechanical adjustment of the lenses, but shall make no measurements of the eye or the cornea or eval-

uate the physical fit of the lenses, by any means whatsoever; provided that the physician or optometrist who writes or issues the prescription shall remain professionally responsible to the patient.

(B) The adaptation or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

(C) It shall be construed as a violation of this Act for any person not a licensed optometrist or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this Article.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 1.02, eff. Sept. 1, 1969.]

## ARTICLE 2. TEXAS OPTOMETRY BOARD

### Art. 4552-2.01 Board Created

The Texas Optometry Board is created. The board is composed of six members appointed by the governor with the advice and consent of the Senate.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.01, eff. Sept. 1, 1969.]

### Art. 4552-2.02 Qualifications of Members

To be qualified for appointment as a member of the board, a person must be a licensed optometrist who has been a resident of this state actually engaged in the practice of optometry in this state for the period of five years immediately preceding his appointment. A person is disqualified from appointment to the board if he is a member of the faculty of any college of optometry, if he is an agent of any wholesale optical company, or if he has a financial interest in any such college or company. At all times there shall be a minimum of two-thirds of the board who are members of a state optometric association which is recognized by and affiliated with the American Optometric Association.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.02, eff. Sept. 1, 1969.]

### Art. 4552-2.03 Terms of Office

Except for the initial appointees, the members of the board hold office for staggered terms of six years, with the terms of two members expiring on January 31 of odd-numbered years. In making the initial appointments, the governor shall designate two for terms expiring on January 31, 1971, two for terms expiring on January 31, 1973, and two for terms expiring on January 31, 1975.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.03, eff. Sept. 1, 1969.]

### Art. 4552-2.04 Organization of Board

At its first meeting after the appointment of any one or more members, the board shall elect a chairman, a vice-chairman, and a secretary-treasurer.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.04, eff. Sept. 1, 1969.]

### Art. 4552-2.05 Meetings

(a) The board shall hold regular meetings at least twice a year at which examinations of applicants for licenses shall be given. Not less than 10 days' notice of each regular meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the board.

(b) Special meetings shall be held upon the request of four members of the board or upon the call of the chairman.

(c) Four members constitute a quorum for the transaction of business. If a quorum is not present on the day set for any meeting, those present may adjourn from day to day until a quorum is present, but this period may not be longer than three successive days.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.05, eff. Sept. 1, 1969.]

### Art. 4552-2.06 Records

(a) The board shall preserve a record of its proceedings in a book kept for that purpose.

(b) A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The secretary of the board shall on or before March 1 of each year send a certified copy of said record to the secretary of state for permanent record. A certified copy of said record with the hand and seal of the secretary of said board to the secretary of state, shall be admitted as evidence in all courts.

(c) Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary of the board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.06, eff. Sept. 1, 1969.]

### Art. 4552-2.07 Committees

The board shall have power to appoint committees from its own membership. The duties of such committees shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith, as shall be referred to said committees, and they shall make recommendations to the board with respect thereto.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.07, eff. Sept. 1, 1969.]

**Art. 4552-2.08 Employees of Board**

The board shall have the power to employ the services of stenographers, secretaries, inspectors, legal assistants and other personnel necessary to carry out the provisions of this Act. In all hearings before the board, and in all suits in the courts in which the board is a party, the staff attorney employed by the board may at the board's discretion be an attorney of record for the board; provided, however, that when the county attorney, district attorney or attorney general is also an attorney of record, the board's staff attorney shall be subordinate to such county attorney, district attorney, or attorney general, and nothing herein shall be construed to deprive, limit, or exclude the county attorney, district attorney, or attorney general from their right to appear as the board's attorney in the respective courts to which they are assigned by the constitution to represent the state. In all suits in which the board is a party, the board's staff attorney may also be appointed as special assistant to the county attorney, district attorney, or attorney general, provided, however, that such members of the board's staff shall be paid by the board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.08, eff. Sept. 1, 1969.]

**Art. 4552-2.09 Suit for Injunction**

The board may sue in its own name to enjoin the violation of any provision of this Act. This remedy is in addition to any other action, proceeding, or remedy authorized by law.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.09, eff. Sept. 1, 1969.]

**Art. 4552-2.10 Proceedings; Subpoenas; Oaths**

The board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.10, eff. Sept. 1, 1969.]

**Art. 4552-2.11 Bond of Secretary-Treasurer**

Before entering upon the discharge of the duties of his office, the secretary-treasurer of the board shall give such bond for the performance of his duties as the board may require, the premium of which is to be paid from funds in the possession of the board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.11, eff. Sept. 1, 1969.]

**Art. 4552-2.12 Seal; Design of License**

The board shall adopt an official seal and a license of suitable design.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.12, eff. Sept. 1, 1969.]

**Art. 4552-2.13 Office**

The board shall maintain an office where all the permanent records are kept.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.13, eff. Sept. 1, 1969.]

**Art. 4552-2.14 Rules and Regulations**

The board shall promulgate procedural rules and regulations only, consistent with the provisions of this Act, to govern the conduct of its business and proceedings. Notwithstanding any other provision of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.14, eff. Sept. 1, 1969.]

**Art. 4552-2.15 Disposition of Fees**

(a) Except as provided by Subsection (c) of this section, the fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the board, and the remainder shall be applied, by order of the board, to compensate members of the board. The compensation of the members of the board shall be a per diem of \$25 per day for each day they are actually engaged in performing their duties; provided, however, they shall not draw compensation for more than 40 days in any one fiscal year, and in addition to the per diem provided for herein, they shall be entitled to their actual traveling expenses in performance of their duties. Each board member shall make out, under oath, a complete statement of the number of days engaged and the amount of his expenses when presenting same for payment.

(b) The secretary of the board shall receive compensation to be set by the board exclusive of necessary expenses in the performance of his duties.

(c) The funds realized from annual renewal fees shall be distributed as follows: \$10 of each renewal fee collected by the board shall be dedicated to the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the School of Optometry.

The remainder of the fees attributable to annual renewal fees and all other fees payable under this Act shall be placed in the state treasury to the credit of a special fund to be known as the "Optometry Fund," and the comptroller shall upon requisition of the board from time to time draw warrants upon the state treasurer for the amounts specified in

such requisition; provided, however, the fees from this optometry fund shall be expended as specified by itemized appropriation in the General Appropriations bill and shall be used by the Texas Optometry Board, and under its direction in carrying out its statutory duties. [Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.15, eff. Sept. 1, 1969.]

### ARTICLE 3. EXAMINATIONS

#### Art. 4552-3.01 Must Pass Examination

Every person hereafter desiring to be licensed to practice optometry in this state shall be required to pass the examination given by the Texas Optometry Board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.01, eff. Sept. 1, 1969.]

#### Art. 4552-3.02 Application

(a) The applicant shall make application, furnishing to the secretary of the board, on forms to be furnished by the board, satisfactory sworn evidence that he has attained the age of 21 years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent to permit him to matriculate in The University of Texas, and that he has attended and graduated from a reputable university or college of optometry which meets with the requirements of the board, and such other information as the board may deem necessary for the enforcement of this Act.

(b) A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be equivalent to not less than six terms of eight months each, and approved by the board. Provided, however, that the provisions of this subsection shall only apply to those students enrolling in school from and after the effective date of this Act.

(c) Any person who has met all requirements of Subsection (a) above, except United States Citizenship, shall be eligible to take the examination given by the Texas Optometry Board, if such person has filed a declaration of intention to become a citizen of the United States and is currently employed as a teacher or instructor at a reputable university or School of Optometry which meets all requirements of the board. Provided, however, if such person does not become a United States Citizen within 5 years from the date of licensure under this Act, his license shall not be renewed and shall automatically expire at the end of such 5-year period without further action by the board. Provided further, that the board may cancel, revoke, or suspend the license of such person if it finds that:

(1) such licensee has abandoned his intentions and his efforts to become a citizen of the United States; or

(2) such licensee is no longer employed as a teacher or instructor at a reputable university or School of Optometry which meets all the requirements of the board, and such licensee is not a citizen of the United States; or

(3) such licensee has violated any provision of Section 4.04 of this Act.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.02, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2492, ch. 815, § 1, eff. June 8, 1971.]

#### Art. 4552-3.03 Fees

The board shall charge a fee of \$35 for examining an applicant for license, which fee must accompany the application. If the applicant who, because of failure to pass the examination, be refused a license, he shall be permitted to take a second examination upon payment of \$12.50, provided the second examination is taken within a period of one year. The fee for issuing a license shall be \$25 to be paid to the secretary of the board. If anyone successfully passing the examination and meeting the requirements of the board has not paid the fee for issuance of a license within 90 days after having been notified by registered mail at the address given on his examination papers, or at the time of the examination that he is eligible for same, such person shall by his own act have waived his right to obtain his license, and the board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.03, eff. Sept. 1, 1969.]

#### Art. 4552-3.04 Notice of Examination

Each applicant shall be given due notice of the date and place of the examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.04, eff. Sept. 1, 1969.]

#### Art. 4552-3.05 Subjects of Examination

The examination shall consist of written, oral or practical tests, in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology and pathology of the eye as applied to optometry and in such other subjects as may be regularly taught in all recognized standard optometric universities or schools.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.05, eff. Sept. 1, 1969.]

#### Art. 4552-3.06 Conduct of Examination

All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.06, eff. Sept. 1, 1969.]



**Art. 4552-3.07 Those Passing Entitled to License**

Every candidate successfully passing the examination and meeting all requirements of the board shall be registered by the board as possessing the qualifications required by this law and shall receive from this board a license to practice optometry in the state.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.07, eff. Sept. 1, 1969.]

**ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.**

**Art. 4552-4.01 Annual Renewal**

(a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board, not to exceed \$60.

(b) On receipt of said renewal fee, the board shall issue an annual renewal certificate bearing the number of his license, the year for which renewed, and such other information from the records of the board as said board may deem necessary for the proper enforcement of this Act.

(c) When an optometrist shall fail to pay his annual renewal fee by March 1 of each year, it shall be the duty of the board to notify such optometrist by registered mail at his last known address that said annual renewal fee is due and unpaid. Provided, that if said annual renewal fee is not paid within 60 days from the date of mailing of such notice, the board shall then cancel said license. The board shall notify the county clerk of the county in which such license may have been recorded of such cancellation, and such clerk, upon receipt of such notice from said board, shall enter upon the optometry register of such county the fact that such license has been cancelled for nonpayment of annual renewal fee and shall notify the board in writing that such entry has been made.

(d) Practicing optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be subject to all penalties of practicing optometry without a license.

(e) After the board has cancelled a license as provided for in this section, the board may thereafter, in its discretion, refuse to issue a new license until such optometrist whose license has been cancelled for nonpayment of annual renewal fee, has passed the regular examination for license as provided for by this Act.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.01, eff. Sept. 1, 1969.]

**Art. 4552-4.01A Expiration Dates of Licenses; Proration of Fees**

The board by rule may adopt a system under which licenses expire on various dates during

the year, and the final date for payment, the date for notice of nonpayment, and the date for license cancellation shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on or before January 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

[Acts 1973, 63rd Leg., p. 625, ch. 266, § 9, eff. June 11, 1973.]

**Art. 4552-4.02 Renewal After Discharge From Military**

Any licensed optometrist whose renewal certificate has expired while he has been engaged in federal service or in active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Maritime Service or the State Militia called into service or training or education under the supervision of the United States, preliminary to induction into the military service, may have his renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the board with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.02, eff. Sept. 1, 1969.]

**Art. 4552-4.03 Lost or Destroyed License**

If any license issued under this law shall be lost or destroyed, the holder of said license shall make an affidavit of its loss or destruction, and that he is the same person to whom such license was issued, and such other information as may be desired by the board, and shall, upon payment of a fee of \$2.50 be granted a license under this law.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.03, eff. Sept. 1, 1969.]

**Art. 4552-4.04 Revocation, Suspension, etc.**

(a) The board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license if it finds that:

(1) the applicant or licensee is guilty of gross immorality;

(2) the applicant or licensee is guilty of any fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in his seeking admission to such practice;

(3) the applicant or licensee is unfit or incompetent by reason of negligence;

(4) the applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(5) the applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(6) the licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this state, to so practice;

(7) the licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

(8) the licensee directly or indirectly employs solicitors, canvassers or agents for the purpose of obtaining patronage;

(9) the licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this state;

(10) the applicant or licensee has willfully or repeatedly violated any of the provisions of this Act;

(11) the licensee has willfully or repeatedly represented to the public or any member thereof that he is authorized or competent to cure or treat diseases of the eye;

(12) the licensee has his right to practice optometry suspended or revoked by any federal agency for a cause which in the opinion of the board warrants such action;

(13) the applicant or licensee has been finally convicted of violation of Article 773 of the Penal Code.<sup>1</sup>

(b) Proceedings under this section shall be begun by filing charges with the board in writing and under oath. Said charges may be made by any person or persons. The chairman of the board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the respondent or his counsel at least 10 days prior thereto. When personal service cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than 10 days after the last date of the publication of the notice.

(c) At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on his behalf, to cross examine witnesses and to have subpoenas issued by the

board. The board shall thereupon determine the charges upon their merits.

(d) Any person whose license to practice optometry has been refused or has been revoked or suspended by the board may, within 20 days after the making and entering of such order, take an appeal to any of the district courts of the county of his residence, but the decision of the board shall not be stayed or enjoined except upon application to such district court after notice to the board.

(e) Upon application, the board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one year after the revocation and shall be made in such manner and form as the board may require.

(f) Nothing in this Act shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.04, eff. Sept. 1, 1969.]

<sup>1</sup> Transferred; see, now, art. 4505a.

#### ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS

##### Art. 4552-5.01 Display of License

Every person practicing optometry in this state shall display his license or certificate in a conspicuous place in the principal office where he practices optometry and whenever required, exhibit such license or certificate to said board, or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for the same respectively.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.01, eff. Sept. 1, 1969.]

##### Art. 4552-5.02 Recordation of License

It shall be unlawful for any person to practice optometry within the limits of this state who has not registered and recorded his license in the office of the county clerk of the county in which he resides, and in each county in which he practices, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the office of the

county clerk shall be prima facie evidence of the lack of the possession of such license to practice optometry.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.02, eff. Sept. 1, 1969.]

#### Art. 4552-5.03 Optometry Register

Each county clerk in this state shall purchase a book of suitable size, to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist, and record in said optometry register the name and record of each optometrist who presents for record a license or certificate issued by the state board. When an optometrist shall have his license revoked, suspended, or cancelled, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the optometry register, which entry shall close the record and be prima facie evidence of the fact that the license has been so cancelled, suspended or revoked. The county clerk of each county shall, upon the request of the secretary of the board, certify to the board a correct list of the optometrists then registered in the county, together with such other information as the board may require.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.03, eff. Sept. 1, 1969.]

#### Art. 4552-5.04. Practice Without License; Fraud; House-to-House

It shall be unlawful for any person to:

(1) falsely impersonate any person duly licensed as an optometrist under the provisions of this Act or to falsely assume another name;

(2) buy, sell, or fraudulently obtain any optometry diploma, license, record of registration or aid or abet therein;

(3) practice, offer, or hold himself out as authorized to practice optometry or use in connection with his name any designation tending to imply that he is a practitioner of optometry if not licensed to practice under the provisions of this Act;

(4) practice optometry during the time his license shall be suspended or revoked;

(5) practice optometry from house-to-house or on the streets or highways, notwithstanding any laws for the licensing of peddlers. This shall not be construed as prohibiting an optometrist or physician from attending, prescribing for and furnishing spectacles, eyeglasses or ophthalmic lenses to a person who is confined to his abode by reason of illness or physical or mental infirmity, or in response to an unsolicited request or call, for such professional services.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.04, eff. Sept. 1, 1969.]

#### Art. 4552-5.05. Treating Diseased Eyes

Anyone practicing optometry who shall prescribe for or fit lenses for any diseased condi-

tion of the eye, or for the disease of any other organ of the body that manifests itself in the eye, shall be deemed to be practicing medicine within the meaning of that term as defined by law. Any such person possessing no license to practice medicine who shall so prescribe or fit lenses shall be punished in the same manner as is prescribed for the practice of medicine without a license.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.05, eff. Sept. 1, 1969.]

#### Art. 4552-5.06. Spectacles as Premiums

It shall be unlawful for any person in this state to give, or cause to be given, deliver, or cause to be delivered, in any manner whatsoever, any spectacles or eyeglasses, separate or together, as a prize or premium, or as an inducement to sell any book, paper, magazine or any work of literature or art, or any item of merchandise whatsoever.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.06, eff. Sept. 1, 1969.]

#### Art. 4552-5.07. Prescribing Without Examination

No licensed optometrist shall sign, or cause to be signed, a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person for whom the prescription is made.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.07, eff. Sept. 1, 1969.]

#### Art. 4552-5.08. Practice While Suffering from Contagious Disease

No licensed optometrist shall practice optometry while knowingly suffering from a contagious or infectious disease.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.08, eff. Sept. 1, 1969.]

#### Art. 4552-5.09. Advertising by Optometrist

(a) No optometrist shall publish or display, or knowingly cause or permit to be published or displayed by newspaper, radio, television, window display, poster, sign, billboard, or any other advertising media, any statement or advertisement of any price offered or charged by him for any ophthalmic services or materials, or any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles, or parts thereof which is fraudulent, deceitful, misleading, or which in any manner whatsoever tends to create a misleading impression, including statements or advertisements of bait, discount, premiums, gifts, or any statements or advertisements of a similar nature, import, or meaning.

(b) This section shall not operate to prohibit optometrists who also own, operate, or manage a dispensing opticianry from advertising in any manner permitted under any section of this bill so long as such advertising is done in the name of the dispensing opticianry and not

in the name of the optometrist in his professional capacity.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.09, eff. Sept. 1, 1969.]

#### Art. 4552-5.10 Advertising by Dispensing Opticians

(a) No person, firm or corporation shall publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, window display, poster, sign, billboard or any other means or media any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles or parts thereof which is fraudulent, deceitful or misleading, including statements or advertisements of bait, discount, premiums, price, gifts or any statements or advertisements of a similar nature, import or meaning.

(b) No person, firm or corporation shall publish or display or cause or permit to be published or displayed in any newspaper, or by radio, television, window display, poster, sign, billboard or any other means or media, any statement or advertisement of or reference to the price or prices of any eyeglasses, spectacles, lenses, contact lenses or any other optical device or materials or parts thereof requiring a prescription from a licensed physician or optometrist unless such person, firm or corporation complies with the provisions of Subsections (c)-(j) of this section.

(c) The person, firm or corporation shall obtain from the board an "Advertising Permit," which permit shall be granted to any person, firm or corporation which is engaged in the business of a dispensing optician in Texas.

(d) Such person, firm or corporation shall after receipt of such permit, but before beginning any such advertising, file with the board a list of prices which shall be charged for such eyeglasses, spectacles, lenses, contact lenses or other optical devices or materials or parts thereof in each and all of the following categories:

- (1) single vision lenses;
- (2) kryptok bifocal lenses;
- (3) regular bifocal lenses;
- (4) trifocal lenses;
- (5) aphakic lenses;
- (6) prism lenses;
- (7) double segment bifocal lenses;
- (8) subnormal vision lenses;
- (9) contact lenses.

(e) No change may be made in any such price advertisement until the change has been filed with the board.

(f) Any advertisement or statement published or displayed as above described which contains the price of any of the categories shown above shall also contain the prices of all other categories and all such items, and the prices thereof, shall be published or displayed with equal prominence. No advertisement which

shows the price of items listed in the categories shown above shall contain any language which directly or indirectly compares the prices so quoted with any other prices of similar items. In the event an "Advertising Permit" is issued to a dispensing optician there shall be displayed prominently in each reception room and display room of each office owned or operated by such dispensing optician a complete current list of all prices on file with the board as provided above. In showing the price of "all other categories and all such items" as required by this section, it shall be permissible to combine two or more categories into one general category of "all other lenses" and designate the price thereby of "up to \$\_\_\_\_\_," which represents the highest price of any lenses included within this combined general category. Should there be a category in which two or more price differentials exist, it shall be permissible for the category to have a single listing in the advertisement with the lowest and the highest price in the category designated.

(g) In the event the dispensing optician owns more than one office, the prices for all such eyeglasses, spectacles, lenses, contact lenses or other optical devices or materials or parts thereof in the same category shall be the same in all offices located within the geographical limits of a county or a city regardless of the name under which such dispensing optician operates such offices.

(h) All such eyeglasses, spectacles, lenses, contact lenses, or other optical devices or materials or parts thereof must conform to standards of quality as promulgated by the American Standards Association, Inc., and commonly known as Z80.1-1964 standards.

(i) On or before April 1, of each calendar year each person, firm or corporation holding an "Advertising Permit" hereunder shall file with the board a statement sworn to by such person or officer of such firm or corporation specifying separately for each office owned by such person, firm or corporation the percentage of the total unit sales of each such office owned by such person, firm or corporation allocated to sales of single vision lenses, bifocal lenses, trifocal lenses, contact lenses and all other lenses requiring a prescription from a licensed physician or optometrist during the prior calendar year. The person making such sworn statement shall be subject to the obligations and penalties of Article 310 of the Penal Code.

(j) All items advertised by price in accordance with this section shall be available at the advertised price without limit to quantity to all persons including, but not limited to, individuals, physicians, optometrists, dispensing opticians or the employees of any of them.

(k) Willful or repeated violation by any person, firm or corporation holding an "Advertising Permit" hereunder of any provision of Subsections (d)-(j) of this section shall be grounds for suspension of such "Advertising

Permit" by the board for a period not to exceed six months. If after the expiration of such suspension, the board, after a hearing, finds that there has been a second or subsequent willful or repeated violation of any provision of Subsections (d)-(j) of this section such "Advertising Permit" shall be permanently cancelled and may not be reissued or renewed. [Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.10, eff. Sept. 1, 1969.]

#### Art. 4552-5.11 Window Displays and Signs

(a) It shall be unlawful for any optometrist:

(1) to display or cause to be displayed any spectacles, eyeglasses, frames or mountings, goggles, lenses, prisms, contact lenses, eyeglass cases, ophthalmic material of any kind, optometric instruments, or optical tools or machinery, or any merchandise or advertising of a commercial nature in his office windows or reception rooms;

(2) to make use of or permit the continuance of any colored or neon lights, eyeglasses or eye signs, whether painted, neon, decalcomania, or any other either in the form of eyes or structures resembling eyes, eyeglass frames, eyeglasses or spectacles, whether lighted or not, or any other kind of signs or displays of a commercial nature in his optometric office.

(b) Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to any of the provisions of this Section 5.11 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to the provisions of this Section 5.11 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.11, eff. Sept. 1, 1969.]

#### Art. 4552-5.12 Basic Competence

(a) In order to insure an adequate examination of a patient for whom an optometrist signs or causes to be signed a prescription for an ophthalmic lens, in the initial examination of the patient the optometrist shall make and record, if possible, the following findings of the condition of the patient:

(1) Case History (ocular, physical, occupational and other pertinent information).

(2) Far point acuity, O.D., O.S., O.U., unaided; with old glasses, if available, and with new glasses, if any.

(3) External examination (lids, cornea, sclera, etc.).

(4) Internal ophthalmoscopic examination (media, fundus, etc.).

(5) Static retinoscopy, O.D., O.S.

(6) Subjective findings, far point and near point.

(7) Phorias or ductions, far and near, lateral and vertical.

(8) Amplitude or range of accommodation.

(9) Amplitude or range of convergence.

(10) Angle of vision, to right and to left.

(b) Every prescription for an ophthalmic lens shall include the following information: interpupillary distance, far and near; lens prescription, right and left; color or tint; segment type, size and position; the optometrist's signature.

(c) The willful or repeated failure or refusal of an optometrist to comply with any of the foregoing requirements shall be considered by the board to constitute prima facie evidence that he is unfit or incompetent by reason of negligence within the meaning of Section 4-04(a)(3) of this Act,<sup>1</sup> and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instances in which it is alleged that the rule was not complied with. At a hearing pursuant to the filing of such charges, the person charged shall have the burden of establishing that compliance with the rule in each instance in which proof is adduced that it was not complied with was not necessary to a proper examination of the patient in that particular case.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.12, eff. Sept. 1, 1969.]

<sup>1</sup> Article 4552-4.04(a)(3).

#### Art. 4552-5.13 Professional Responsibility

(a) The provisions of this section are adopted in order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility, and further safeguard the doctor-patient relationship.

(b) No optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist from paying an employee in the regular course of employment, and provided further, that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

(c) No optometrist shall divide, share, split or allocate, either directly or indirectly, any fee for optometric services or materials with another optometrist or with a physician except upon a division of service or responsibility provided that this rule shall not be interpreted to prevent partnerships for the practice of optometry. This Act does not prohibit an optometrist from being employed on a salary, with or without bonus arrangements, by a licensed op-

tometrists or physician, regardless of the amount of supervision exerted by the employing optometrist or physician over the office in which the employed optometrist works, provided such bonus arrangements, if any, shall not be based in whole or in part on the business or income of any optical company.

(d) No optometrist shall practice or continue to practice optometry under, or use in connection with his practice of optometry, any assumed name, corporate name, trade name, or any name other than the name under which he is licensed to practice optometry in Texas; provided, however, that optometrists practicing as partners may practice under the full or last names of the partners. Optometrists who are employed by other optometrists shall practice in their own names, but may practice in an office listed under the name of the individual optometrist or partnership of optometrists by whom they are employed. In event of the death or retirement of a partner, the surviving partner or partners practicing optometry in a partnership name may, with the written permission of the retiring partner or the deceased optometrist's widow or other legal representative, as the case may be, continue to practice with the name of the deceased partner in the partnership name for a period not to exceed one year from the date of his death, or during the period of administration of a deceased partner's estate as provided by Section 4.04(f) of this Act,<sup>1</sup> whichever period shall be the longer.

(e) No optometrist shall use, cause or allow to be used, his name or professional identification, as authorized by Article 4590e, as amended, Revised Civil Statutes of Texas, on or about the door, window, wall, directory, or any sign or listing whatsoever, of any office, location or place where optometry is practiced, unless said optometrist is actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(f) No optometrist shall practice or continue to practice optometry in any office, location or place of practice where any name, names or professional identification on or about the door, window, wall, directory, or any sign or listing whatsoever, or in any manner used in connection therewith, shall indicate or tend to indicate that such office, location or place of practice is owned, operated, supervised, staffed, directed or attended by any person not actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(g) The requirement of Subsections (e) and (f) of this section that an optometrist be "actually present" in an office, location or place of practice holding his name out to the public shall be deemed satisfied if the optometrist is, as to such office, location or place of practice, either:

(1) physically present therein more than half the total number of hours such office, location, or place of practice is open to the public for the practice of optometry during each calendar month for at least nine months in each calendar year; or

(2) physically present in such office, location, or place of practice for at least one-half of the time such person conducts, directs, or supervises any practice of optometry.

(h) Nothing in this section shall be interpreted as requiring the physical presence of a person who is ill, injured, or otherwise incapacitated temporarily.

(i) The requirement of Subsections (e) and (f) of this section that an optometrist be "practicing optometry" at an office, location, or place of practice holding his name out to the public shall be deemed satisfied if the optometrist regularly makes personal examination at such office, location, or place of practice of the eyes of some of the persons prescribed for therein or regularly supervises or directs in person at such office, location or place of practice such examinations.

(j) The willful or repeated failure or refusal of an optometrist to comply with any of the provisions of this section shall be considered by the board to constitute prima facie evidence that such optometrist is guilty of violation of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instance or instances in which it is alleged that the rule was not complied with. Alternatively, or in addition to the above, it shall be the duty of the board to institute and prosecute an action in a court of competent jurisdiction to restrain or enjoin the violation of any of the preceding rules.

(k) Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to Subsections (b), (c), (d), and (f) of this Section 5.13 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to said Subsections (b), (c), (d) and (f) of this Section 5.13 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.13, eff. Sept. 1, 1969.]

<sup>1</sup> Article 4552-4.04(f).

#### Art. 4552-5.14 Lease of Premises from Mercantile Establishment

(a) In order to safeguard the visual welfare of the public and the optometrist-patient relationship, fix professional responsibility, estab-

lish standards of professional surroundings, more nearly secure to the patient the optometrist's undivided loyalty and service, and carry out the prohibitions of this Act against placing an optometric license in the service or at the disposal of unlicensed persons, the provisions of this section are applicable to any optometrist who leases space from and practices optometry on the premises of a mercantile establishment.

(b) The practice must be owned by a Texas-licensed optometrist. Every phase of the practice and the leased premises shall be under the exclusive control of a Texas-licensed optometrist.

(c) The prescription files and all business records of the practice shall be the sole property of the optometrist and free from involvement with the mercantile establishment or any unlicensed person. Except, however, that those business records essential to the successful initiation or continuation of a percentage of gross receipts lease of space may be inspected by the applicable lessor.

(d) The lease space shall be definite and apart from the space occupied by other occupants of the premises. It shall be separated from space used by other occupants of the premises by solid, opaque partitions or walls from floor to ceiling. Railings, curtains, and other similar arrangements are not sufficient to comply with this requirement.

(e) The leased space shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. The aisle of a mercantile establishment does not comply with this requirement. An entrance to the leased space is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

(f) No phase of the optometrist's practice shall be conducted as a department or concession of the mercantile establishment; and there shall be no legends or signs such as "Optical Department," "Optometrical Department," or others of similar import, displayed on any part of the premises or in any advertising.

(g) The optometrist shall not permit his name or his practice to be directly or indirectly used in connection with the mercantile establishment in any advertising, displays, signs, or in any other manner.

(h) All credit accounts for patients shall be established with the optometrist and not the credit department of the mercantile establishment. However, nothing in this subsection prevents the optometrist from thereafter selling, transferring, or assigning any such account.

(i) Any optometrist practicing optometry on or after April 15, 1969, in a manner, or under conditions, contrary to any of the provisions of this Section 5.14 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to

the provisions of this Section 5.14 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970. [Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.14, eff. Sept. 1, 1969.]

#### Art. 4552-5.15 Relationships with Dispensing Opticians

(a) The purpose of this section is to insure that the practice of optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.

(b) If an optometrist occupies space for the practice of optometry in a building or premises in which any person, firm, or corporation engages in the business of a dispensing optician, the space occupied by the optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The space occupied by the optometrist shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. An entrance is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

(c) An optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the books, records, and accounts of the firm or corporation must be kept separate and distinct from the books, records, and accounts of the practice of the optometrist.

(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist for the practice of optometry other than a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist, he shall maintain a completely separate set of books, records, files, and accounts in connection therewith. Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to any of the provisions of this Section 5.15 by virtue of occupying premises under an existing

or negotiated lease in effect on April 15, 1969, shall not be subject to the provisions of this Section 5.15 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.

(e) If, after examining a patient, an optometrist believes that lenses are required to correct or remedy any defect or abnormal condition of vision, the optometrist shall so inform the patient and shall expressly state that the patient has two alternatives for the preparation of the lenses according to the optometrist's prescription: First, that the optometrist will prepare or have the lenses prepared according to the prescription; and second, that the patient may have the prescription filled by any dispensing optician (not naming or suggesting any particular dispensing optician) but should return for an optometrical examination of the lenses. If the patient chooses the first alternative, the optometrist may refer the patient to a particular dispensing optician for selection of frames and filling the prescription.

(f) If any person, on visiting the premises of any dispensing optician without presenting a prescription written by a licensed physician or optometrist, makes any inquiry or request concerning an examination or the obtaining of any ophthalmic materials or services requiring such a prescription, then the optician or his agent or employee may not respond in any manner except to state in effect that the optician cannot examine the patient or prescribe or fit glasses or lenses, but that the patient seeking such service must go to a licensed physician or optometrist. If there is no further inquiry from the prospective patient, the optician or his agent or employee may not make any further statement of any kind. If, however, the prospective patient makes an inquiry as to where or to whom he may go to obtain such service, the optician or his agent or employee shall give the prospective patient the names and addresses of at least three persons, each of whom is either a licensed ophthalmologist or a licensed optometrist whose practice is located within a radius of five miles from the optician's place of business, or if there are fewer than three of these, the name and address of each licensed ophthalmologist or licensed optometrist whose practice is so located.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.15, eff. Sept. 1, 1969.]

#### Art. 4552-5.16 Leasing Space on Percentage Basis; Transferring Accounts Receivable

It shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.16, eff. Sept. 1, 1969.]

#### Art. 4552-5.17 Exceptions

Nothing in this Act shall be construed to apply to persons who sell ready-to-wear spectacles and eyeglasses as merchandise at retail or officers or agents of the United States or the State of Texas, in the discharge of their official duties. Nothing in this Act shall prevent, limit, or interfere with the right of a physician duly licensed by the Texas State Board of Medical Examiners to treat or prescribe for his patients or to direct or instruct others under the control, supervision, or direction of such a physician to aid or minister to the needs of his patients according to the physician's specific directions, instructions or prescriptions; and where such directions, instructions, or prescriptions are to be followed, performed, or filled outside or away from the physician's office such directions, instructions, or prescriptions shall be in writing.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.17, eff. Sept. 1, 1969.]

#### Art. 4552-5.18 Penalty

A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500 or by confinement in the county jail for not less than two months nor more than six months, or both. A separate offense is committed each day a violation of this Act occurs or continues.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.18, eff. Sept. 1, 1969.]

### ARTICLE 6. MISCELLANEOUS PROVISIONS

#### Art. 4552-6.01 Board of Examiners Abolished

The Texas State Board of Examiners in Optometry is abolished. All property, equipment, records, files, and papers in the possession of that board are transferred to the Texas Optometry Board created by this Act. All references in the statutes to the Texas State Board of Examiners in Optometry shall be construed to mean the Texas Optometry Board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.01, eff. Sept. 1, 1969.]

#### Art. 4552-6.02 Severability

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

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.02, eff. Sept. 1, 1969.]

#### Art. 4552-6.03 Repealer

Chapter 10, Title 71, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and Chapter 5, Title 12, Penal Code of Texas, 1925, as amended,<sup>2</sup>



and all other laws and parts of laws in conflict with this Act are hereby repealed.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.03, eff. Sept. 1, 1969.]

- <sup>1</sup> Articles 4552, 4553 to 4566-1.
- <sup>2</sup> Penal Code (1925), Arts. 735 to 738a.

**Art. 4552-6.04 Effective Date**

This Act takes effect September 1, 1969.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.04, eff. Sept. 1, 1969.]

**CHAPTER TEN A. HEARING AIDS**

- Article
- 4566-1.01 Definitions.
  - 4566-1.02 Board of Examiners.
  - 4566-1.03 Board Organization and Meetings.
  - 4566-1.04 Powers and Duties of the Board.
  - 4566-1.05 Records.
  - 4566-1.06 Examination; Application.
  - 4566-1.07 License Without Examination.
  - 4566-1.08 Reciprocal Arrangements.
  - 4566-1.09 Temporary Training Permit.
  - 4566-1.10 Refusal to License and Revocation or Suspension of License—Grounds.
  - 4566-1.11 Procedure.
  - 4566-1.12 Fees and Expenses.
  - 4566-1.13 Renewal of License.
  - 4566-1.13A Expiration Dates of Licenses; Proration of Fees.
  - 4566-1.14 Duty of a Licensee.
  - 4566-1.15 Prohibited Acts.
  - 4566-1.16 Penalty.
  - 4566-1.17 Treatment of Ear Defects and Administration of Drugs.
  - 4566-1.18 Employment of Licensee.
  - 4566-1.19 Exceptions.
  - 4566-1.20 Exceptions From the Basic Science Law.
  - 4566-1.21 Severability.
  - 4566-1.22 Effective Date.

**Art. 4566-1.01 Definitions**

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

- (a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.
- (b) "License" means license issued by the Board under this Act to person authorized to fit and dispense hearing aids.
- (c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.
- (d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.
- (e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed un-

der this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 1, eff. Jan. 1, 1970.]

**Art. 4566-1.02 Board of Examiners**

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearings Aids is hereby created. The Board shall be composed of nine members with the following qualifications, to-wit:

- (1) Six of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such six members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;
- (2) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale hearing aid company;
- (3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and
- (4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) The members of the initial Board, to be appointed by the Governor to take office on the effective date of this Act, shall be divided into three classes, to-wit: Class One, Class Two, and Class Three, and their terms of office shall be determined by lot at the first meeting of the Board. The three Class One members shall hold office for two years; and the three Class Two members shall hold office for four years; and the three Class Three members shall hold office for six years respectively, from the time of their appointment. Biennially thereafter, the Governor shall appoint three members of the Board to hold office for a term of six years.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 2, eff. Jan. 1, 1970.]

#### Art. 4566-1.03 Board Organization and Meetings

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than 30 days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the Board. Written notice of such regular meetings of the Board shall be given to the members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of such regular meeting. Special meetings of the Board shall be held upon the written request of a majority of the members or upon the call of the President. Written notice of such special meetings of the Board shall be given to members by the Secretary-Treasurer of the Board by certified mail not less than 30 days prior to the date of the special meetings. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 3, eff. Jan. 1, 1970.]

#### Art. 4566-1.04 Powers and Duties of the Board

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.

(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 4, eff. Jan. 1, 1970.]

#### Art. 4566-1.05 Records

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 5, eff. Jan. 1, 1970.]

#### Art. 4566-1.06 Examination; Application

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of 18 years, is of good moral character, is free of contagious or infectious disease, and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests in the following areas as they pertain to the fitting and dispensing of hearing aids, to-wit:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination

has been announced and publicized nor shall there be more than one change or group of changes in any one calendar year. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. All applicants examined during a given calendar year shall be given the same examination. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 6, eff. Jan. 1, 1970.]

#### Art. 4566-1.07 License Without Examination

Within 120 days after the effective date of this Act, and not thereafter, any person engaged in fitting and dispensing hearing aids on the effective date of this Act, shall be registered by the Board as passing the qualifications of this Act and shall receive from the Board a license to fit and dispense hearing aids in this state without taking the examination provided for in this Act upon presentation, in writing, by such person to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that such person has attained the age of 18 years of age, is of good moral character, is free of contagious or infectious diseases and has been engaged in fitting and dispensing hearing aids in the United States of America for a period of at least one year immediately prior to the effective date of this Act.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 7, eff. Jan. 1, 1970.]

#### Art. 4566-1.08 Reciprocal Arrangements

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas in true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 8, eff. Jan. 1, 1970.]

#### Art. 4566-1.09 Temporary Training Permit

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act,<sup>1</sup> upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 9, eff. Jan. 1, 1970.]

<sup>1</sup> Article 4566-1.06(b).

#### Art. 4566-1.10 Refusal to License and Revocation or Suspension of License—Grounds

The Board may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted, for any of the following reasons:

(1) The applicant or licensee is guilty of gross immorality.

(2) The applicant or licensee is unfit or incompetent by reason of negligence.

(3) The applicant or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing hearing aids or in his seeking of a license under this Act.

(4) The applicant or licensee has been convicted of a felony or a misdemeanor which involved moral turpitude.

(5) The applicant or licensee is a habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effects or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind.

(6) The applicant or licensee has violated any of the provisions of this Act.

(7) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(8) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(9) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(10) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this Subsection (10) and the following Subsection (11) be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

(11) The licensee advertised a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than was advertised.

(12) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, ad-

justment, maintenance, or repair of a hearing aid when such representation was not true.

(13) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(14) The licensee defamed another licensee under this Act by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or any other false representation or falsely disparaging the products of such other licensee in any respect, or the business methods, selling prices, values, credit terms, policies, or services of such other licensee.

(15) The licensee displayed competitive products in his place of business, or in the advertising in such manner as to falsely disparage them.

(16) The licensee quoted prices of competitive hearing aids or devices without disclosing that the prices were not the present, correct, current prices, or falsely showed, demonstrated or represented competitive hearing aids models as being the correct, current model of such hearing aids.

(17) The licensee imitated or simulated the trademark, tradename, brand, or label of another licensee under this Act with the intent to mislead or deceive purchasers or prospective purchasers.

(18) The licensee used in his advertising the name, model name or trademark of a particular manufacturer of hearing aids with the intent to falsely imply a relationship with such manufacturer that does not exist.

(19) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(20) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(21) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(22) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(23) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

(24) The licensee had failed to actively engage in the fitting and dispensing of hearing aids for a period of three consecutive years.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 10, eff. Jan. 1, 1970.]

#### Art. 4566-1.11 Procedure

(a) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(b) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(c) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(d) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(e) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(f) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(g) A case reviewed under the provisions of this section proceeds in such district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of such district court will lie as other civil cases.

(h) Upon application, the Board may reissue a license to fit and dispense hearing aids to a

person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 11, eff. Jan. 1, 1970.]

#### Art. 4566-1.12 Fees and Expenses

(a) The Board shall charge a fee of \$25.00 for issuing a temporary training permit, which fee must accompany the application for a temporary training permit.

(b) The Board shall charge a fee of \$35.00 for examining an applicant for a license, which fee must accompany the application.

(c) The Board shall charge a fee of \$50.00 for issuing a license.

(1) Any person making application for a license without an examination as provided in Sections 7 and 8<sup>1</sup> must submit such fee with such application.

(2) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(d) The Board shall charge a fee of \$5.00 for each duplicate license or duplicate temporary training permit.

(e) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in a separate fund to be designated as the State Board of Examiners in the Fitting and Dispensing of Hearing Aids Fund.

(f) The compensation and travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

(g) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(h) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery

expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(i) The total appropriations to the Board shall never exceed the amount of fees estimated by the State Comptroller of Public Accounts that will be collected by the Board during the period for which the appropriations are made and any surplus sums on deposit in the State Board of Examiners in the Fitting and Dispensing of Hearing Aids Fund. Any funds appropriated and unexpended within the period for which the same were appropriated shall remain in the State Board of Examiners in the Fitting and Dispensing of Hearing Aids Fund.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 12, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2456, ch. 796, § 1, eff. June 8, 1971.]

<sup>1</sup> Articles 4566-1.07, 4566-1.08.

#### Art. 4566-1.13 Renewal of License

(a) On or before the first day of January, 1972, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$67.50 for the renewal of his license to fit and dispense hearing aids for the year 1972. On or before the first day of January, 1973, and every year thereafter, every licensee under this Act shall pay to the Secretary-Treasurer of the Board an annual renewal fee of \$75.00 for renewal of his license to fit and dispense hearing aids for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of his license, the year for which it is renewed, and such other information from the records of the Board as the Board may deem necessary for the proper enforcement of this Act.

(b) When a licensee shall fail to pay his annual renewal fee by February 1st of each year, it shall be the duty of the Board to notify such licensee by certified mail at his last known address that said annual renewal fee is due and unpaid; if the annual renewal fee is not paid within 60 days from the said date of mailing such notice, the Board shall then cancel said license.

(c) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(d) After the Board shall have cancelled a license for nonpayment of the annual renewal fee, the Board may refuse to issue a new license until such fitter and dispenser of hearing aids has paid all previous unpaid annual fees.

(e) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the author-

ity to prescribe the procedure and requirements for the issuance of the duplicate license. [Acts 1969, 61st Leg., p. 1122, ch. 366, § 13, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2456, ch. 796, § 2, eff. June 8, 1971.]

**Art. 4566-1.13A Expiration Dates of Licenses; Proration of Fees**

The board by rule may adopt a system under which licenses expire on various dates during the year, and the date of notice and cancellation upon failure to pay shall be adjusted accordingly. For the year in which the expiration date is changed, license fees payable on or before January 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

[Acts 1973, 63rd Leg., p. 624, ch. 266, § 6, eff. June 11, 1973.]

**Art. 4566-1.14 Duty of a Licensee**

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt.

(c) Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 14, eff. Jan. 1, 1970.]

**Art. 4566-1.15 Prohibited Acts**

(a) It is unlawful for any person to:

(1) buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;

(2) alter a license to fit and dispense hearing aids with the intent to defraud;

(3) willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;

(4) falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act;

(5) offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act;

(6) engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked.

(7) before any sale of a hearing aid shall be consummated, the person purchasing the hearing aid must have his hearing tested at an examination conducted in person by the licensee.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of a temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act.<sup>1</sup>

(c) It is unlawful for any licensee to:

(1) fail to clearly disclose his name, business address, and the purpose of the communication in any telephone solicitation of potential customers;

(2) use or purchase for use a list of names of potential customers compiled by a person by telephone other than the licensee, his authorized agent or another licensee;

(3) do any act which requires a license from the Texas Optometry Board or the Texas State Board of Medical Examiners.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 15, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2457, ch. 796, §§ 3, 5, eff. June 8, 1971.]

<sup>1</sup> Article 4566-1.01(b).

**Art. 4566-1.16 Penalty**

Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 16, eff. Jan. 1, 1970.]

**Art. 4566-1.17 Treatment of Ear Defects and Administration of Drugs**

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 17, eff. Jan. 1, 1970.]

**Art. 4566-1.18 Employment of Licensee**

(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.

(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 18, eff. Jan. 1, 1970.]

**Art. 4566-1.19 Exceptions**

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.

(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 19, eff. Jan. 1, 1970; Acts 1971, 62nd Leg., p. 2457, ch. 796, § 4, eff. June 8, 1971.]

**Art. 4566-1.20 Exceptions From the Basic Science Law**

The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended commonly referred to as the Basic Science Law<sup>1</sup> do not apply to fitters and dispensers of hearing aids duly qualified and licensed under this Act who confine their activity to the fitting and dispensing of hearing aids.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 20, eff. Jan. 1, 1970.]

<sup>1</sup> Article 4590c.

**Art. 4566-1.21 Severability**

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 21, eff. Jan. 1, 1970.]

**Art. 4566-1.22 Effective Date**

This Act shall become effective January 1, 1970.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 22, eff. Jan. 1, 1970.]

**CHAPTER ELEVEN. PODIATRY****Article**

- 4567. Definitions.
- 4567a. Change of Name to Podiatry.
- 4567b. Practice of Chiropody; Penalty.
- 4567c. Improper Practice; Penalty.
- 4567d. Exceptions.
- 4568. State Board of Chiropody Examiners; Appointment; Terms of Members; Oath; Bond of Secretary-Treasurer; Meetings; Regulations and Bylaws; Powers; Records.
- 4568a. Approval of Names Under Which Podiatrists Practice.
- 4569. Examination Grades; Fee; Subjects; Re-examination.
- 4570. Application for License.
- 4571. Annual Renewal Fee; Lost or Destroyed License; Display of License and Certificate.
- 4571a. Expiration Dates of Registrations; Proration of Fee.
- 4572. Repealed.
- 4573. Revocation, Cancellation, and Suspension of License.
- 4574. Compensation and Expenses.
- 4575. Exceptions.
- 4575a. Enjoining Violation of Chapter.

**Art. 4567. Definitions**

Any person shall be regarded as practicing chiropody within the meaning of this law, and shall be deemed and construed to be a chiropodist, who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a chirop-



odist, podiatrist, pedicurist, foot specialist, doctor or use any title, degree, letter, syllable, word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of chiropody.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 219, ch. 132 § 1.]

#### Art. 4567a. Change of Name to Podiatry

Sec. 1. The name of the Texas State Board of Chiropody Examiners, created by the provisions of Article 4568, Revised Civil Statutes of Texas, 1925, as amended, is changed to the Texas State Board of Podiatry Examiners. The Texas State Board of Podiatry Examiners has the powers heretofore conferred on the Texas State Board of Chiropody Examiners.

Sec. 2. The word chiropody, wherever used in the laws of the State of Texas, shall hereafter be construed to mean podiatry. The definition of the practice of podiatry is the same as the definition heretofore of the practice of chiropody, as defined in Article 4567, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 3. The word chiropodist, wherever used in the laws of the State of Texas, shall hereafter be construed to mean podiatrist, and any person heretofore licensed as a chiropodist shall be referred to as a licensed podiatrist.

[Acts 1967, 60th Leg., p. 181, ch. 96, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 181, ch. 96, § 4 increased the annual license renewal fee and is set out as a note under article 4571; section 5 thereof increased the per diem allowance for members of the Board of Podiatry Examiners and is set out as a note under article 4574; and section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

#### Art. 4567b. Practice of Chiropody; Penalty

Any person shall be regarded as practicing chiropody within the meaning of this law, and shall be deemed and construed to be a chiropodist, who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a chiropodist, podiatrist, pedicurist, foot specialist, doctor or use any title, degree, letter, syllable, word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of chiropody. Whoever professes to be a chiropodist, practices or assumes the duties incident to the practice of chiropody within the meaning of this law or Article, without first obtaining from the Texas State Board of Chiropody Examiners a license authorizing such person to practice chiropody, shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail of not less than thirty (30) days, nor more than six (6) months, or by both fine and imprisonment. Whoever shall employ, agree to employ, pay or promise to pay, any person, persons, firm, partnership or corpora-

tion for securing, soliciting or drumming patients for a chiropodist, shall be subject to the penalties provided for in this Article, and whoever shall pay, agree to pay, accept a fee or reward or any compensation directly or indirectly from firms, persons or a person, corporation, partnership or company, shall be subject to the penalties provided for in this Article and each payment, reward or fee shall constitute a separate offense.

[1925 P.C.; Acts 1939, 46th Leg., p. 368, § 6; Acts 1951, 52nd Leg., p. 219, ch. 132, § 7.]

#### Art. 4567c. Improper Practice; Penalty

If any licensed chiropodist shall amputate the human foot, he shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment for each offense.

[1925 P.C.; Acts 1951, 52nd Leg., p. 219, ch. 132, § 9.]

#### Art. 4567d. Exceptions

The two preceding articles shall not apply to physicians licensed by the State Board of Medical Examiners of this State, nor to surgeons of the United States Army, Navy, and Public Health Service, when in actual performance of their official duties.

[1925 P.C.]

Acts 1973, 63rd Leg., p. 67, ch. 44, § 1, enacting article 4568a, provides in subd. (f) that the provisions of said article are cumulative of and supplementary to this article and do not repeal or supersede it.

#### Art. 4568. State Board of Chiropody Examiners; Appointment; Terms of Members; Oath; Bond of Secretary-Treasurer; Meetings; Regulations and Bylaws; Powers; Records

The State Board of Chiropody Examiners shall consist of six (6) reputable practicing chiropodists who have resided in the State of Texas, and who have been actively engaged in the practice of chiropody for a period of five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any chiropody college, or the chiropody department of any medical college, or shall have a financial interest in such colleges. The term of office of each member of said Board shall be six (6) years, except as to the first Board appointed hereunder. Two (2) of its members shall serve for a period of two (2) years; two (2) of its members shall serve for a period of four (4) years; and two (2) of its members shall serve for a period of six (6) years. The respective terms of the first members so appointed shall be designated by the Governor so appointing them, within thirty (30) days after this Act becomes effective. The six (6) members of said Board shall be appointed by the Governor of this State, two (2) to serve two (2) years, two (2) to serve four (4) years, and two (2) to serve six (6) years, or until their successors have been appointed and qualified. Thereafter, at the expi-

ration of the term of each member first appointed, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the State Board of Chiropractic Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars (\$5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the State Board of Chiropractic Examiners.

Said State Board of Chiropractic Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Due notice of such meetings shall be given by publication in two (2) daily newspapers as may be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present.

The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent with this Act, the laws of this State, or of the United States, to govern its proceedings and activities, the regulation of the practice of chiropractic and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto; to employ the services of stenographers, inspectors, and other necessary assistants in the carrying out of the provisions of this Act. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer

oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, "Texas State Board of Chiropractic Examiners." The secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of chiropractic from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary-treasurer of the Board. The records shall be kept by the secretary-treasurer of the Board, and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

The Board shall cause the prosecution of all persons violating any of the provisions of this Act and may incur the expense reasonably necessary in that behalf.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 368, § 1.]

#### Art. 4568a. Approval of Names Under Which Podiatrists Practice

(a) In addition to its other rule-making powers, the Texas State Board of Podiatry Examiners is authorized to adopt rules establishing standards or guidelines for the names, including trade names and assumed names, under which podiatrists may conduct their practices

in this state. In its rules, the Board may also establish procedures for it to review and make determinations approving or disapproving specific names submitted to the Board by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the Board by this Article extends to and includes any and all forms of business organizations under which podiatrists conduct their practices, including without limitation sole proprietorships, associations, partnerships, professional corporations, clinics, health maintenance organizations, and group practices with practitioners of other branches of the healing art.

(c) After the Texas State Board of Podiatry Examiners adopts rules or makes determinations as authorized by this Article, no podiatrist may practice podiatry in this State under any name, including any trade name or assumed name, unless the name is in compliance with the applicable rules or determinations.

(d) Any person who violates any provision of this Article or of any rule or determination of the Board adopted pursuant to this Article is subject to a civil penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each day of violation, as the court may deem proper, to be recovered in the manner provided in Section (e) of this Article.

(e) Whenever it appears that a person has violated or is violating any provision of this Article or of a rule adopted or determination made by the Board pursuant to Section (a) of this Article, then the Board may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation, or for the assessment and recovery of a civil penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. At the request of the Board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty.

(f) The provisions of this Article are cumulative of and supplementary to Article 4568, Revised Civil Statutes of Texas, 1925, as amended, Section 6, Chapter 96, Acts of the 60th Legislature, Regular Session, 1967 (Article 4575a, Vernon's Texas Civil Statutes), and do not repeal or supersede either of those Articles, either in whole or in part.

[Acts 1973, 63rd Leg., p. 67, ch. 44, § 1, eff. April 18, 1973.]

#### Art. 4569. Examination Grades; Fee; Subjects; Re-examination

All applicants for license to practice chiropody in this State under the provisions of this Act, not otherwise licensed under the provisions of law, must successfully pass an examination by said Texas State Board of Chiropody

Examiners. The Texas State Board of Chiropody Examiners is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. The examinations shall be written or practical and in the English language, and all applicants that possess the qualifications required for an examination and who shall pass the examinations prescribed with a general average of seventy-five per cent (75%) in all subjects and not less than sixty per cent (60%) in any one subject shall be issued a license by the Texas State Board of Chiropody Examiners to practice chiropody in this State. The subjects the applicant must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, bacteriology, orthopedics and chiropody, limited in their scope to ailments of the human foot. The Board shall determine the credit to be given on the answers turned in on the subjects in which examined and the discretion of the Board on the examinations shall be final. If any applicant, because of failure to pass the required averages in the examination shall be refused a license, the applicant shall be permitted a subsequent examination at a regular session of the Board without fee within eighteen (18) months from the date of the original examination but not thereafter. All applicants shall pay to the Secretary-Treasurer of the Texas State Board of Chiropody Examiners an examination fee of Forty Dollars (\$40) at least fifteen (15) days before the dates of the regular examinations. Applicants who fail to satisfactorily pass an examination and are refused a license for such failure, shall be entitled to one (1) re-examination without payment of an additional examination fee, provided this first re-examination is taken within eighteen (18) months after date of the original examination. All applicants shall be required to pay the regular examination fee of Forty Dollars (\$40) for all subsequent re-examinations. All examinations or re-examinations shall be in all subjects as provided for in this Act. The Secretary of the Board shall report to each applicant the grade made in each subject and the general average on each examination within sixty (60) days from the date of the examination.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 368, § 2; Acts 1951, 52nd Leg., p. 219, ch. 132 § 2.]

#### Art. 4570. Application for License

(a) A person desiring to practice podiatry in this state shall make written application for a license therefor to the Texas State Board of Podiatry Examiners on a form prescribed by the Board. The information submitted shall be verified by affidavit of the applicant.

(b) The applicant shall submit any information reasonably required by the Board, including evidence satisfactory to the Board that the applicant:

- (1) has attained the age of twenty-one (21) years;<sup>1</sup>
- (2) is of good moral character;

(3) is free of all contagious and communicable diseases, and shall furnish a certificate of health to that effect;

(4) is a citizen of the United States of America;

(5) is a graduate of a recognized high school with credits sufficient and acceptable to enter the state university of the state in which the high school graduation was attained, or The University of Texas, without condition toward a Bachelor's Degree;

(6) has completed at least thirty (30) semester hours of college courses acceptable at the time they were completed for credit on a Bachelor's Degree at The University of Texas; and

(7) is a graduate of a bona fide reputable school of podiatry or chiropody, and shall furnish a diploma from the school.

(c) A podiatry or chiropody school may be considered reputable, within the meaning of this Act, if the course of instruction embraces four (4) terms of approximately eight (8) months each, or the substantial equivalent thereof, and if the school meets the approval of the State Board of Podiatry Examiners. All educational attainments or credits for evaluation within the meaning of this Act, or applicable under this law, shall have been completed within the geographical boundaries of the United States, and no educational credits attained in any foreign country that are not acceptable to The University of Texas toward a Bachelor's Degree, shall be acceptable to the State Board of Podiatry Examiners.

(d) The State Board of Podiatry Examiners may refuse to admit persons to its examinations, and to issue a license to practice podiatry to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or conviction of a violation of Article 779, Penal Code of Texas.<sup>2</sup>

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the health, well-being, or welfare of patients.

(4) Grossly unprofessional or dishonorable conduct, of a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act (Title 71, Chapter 11, Revised Civil Statutes of Texas, 1925, as amended),<sup>3</sup> either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any podiatry degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Podiatry Examiners for a license to practice podiatry.

(9) Altering, with fraudulent intent, any podiatry license, certificate, diploma, or transcript of a podiatry license, certificate, or diploma.

(10) The use of any podiatry license, certificate, diploma, or transcript of any such podiatry license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a podiatry license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice podiatry in this State, for the purpose of treating, or offering to treat, conditions and ailments of the feet of human beings by any method.

(13) Employing, directly or indirectly, any person whose license to practice podiatry has been suspended, or association in the practice of podiatry with any person or persons whose license to practice podiatry has been suspended, or any person who has been convicted of the unlawful practice of podiatry in Texas or elsewhere.

(14) The wilful making of any material misrepresentation or material untrue statement in the application for a license to practice podiatry.

(15) The inability to practice podiatry with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause, have authority to compel a podiatrist to submit to a mental or physical examination by medical doctors designated by it. Failure of a podiatrist to submit to such an examination when directed shall constitute an admission of the allegations against him unless the failure was due to circumstances beyond his control, consequent upon which default a final order may be entered without the taking of testimony or presentation of evidence. A podiatrist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate

that he can resume the competent practice of podiatry with reasonable skill and safety to patients. For the purpose of this paragraph, a podiatrist making application for examination or licensure and every licensed podiatrist under this Act (Title 71, Chapter 11, Revised Civil Statutes of Texas, 1925, as amended) who shall accept the privilege to practice podiatry in this state, and by so practicing or by the making and filing of annual registration to practice podiatry in this state shall be deemed to have given his consent to submit to a mental or physical examination when directed in writing by the Board and further to have waived all objections to the admissibility of the testimony or examination reports of the examining medical doctors on the ground that the same constitute a privileged or confidential communication.

(e) Any applicant who is refused admittance to examination has the right to try the issue in the District Court of the county in which he resides or in which any Board member resides.

(f) All orders of the Board shall be prima facie valid.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 368, § 3; Acts 1951, 52nd Leg., p. 219, ch. 132, § 3; Acts 1963, 58th Leg., p. 40, ch. 27, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 1033, ch. 203, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

<sup>2</sup> Transferred; see, now, art. 4567c.

<sup>3</sup> Article 4567 et seq.

Section 2 of Acts 1963, 58th Leg., p. 40, ch. 27, provided: "Nothing in the Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropody Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

The name "State Board of Chiropody Examiners" and the words "chiropody" and "chiropodists" were changed to "State Board of Podiatry Examiners", "podiatry" and "podiatrists" by Acts 1967, 60th Leg., p. 181, ch. 96. See art. 4567a.

Section 2 of the 1971 Act amended art. 4573. Sections 3 and 4 thereof provided:

"Sec. 3. Nothing in this Act in any way invalidates or affects or shall be construed to invalidate or affect any valid license duly issued by the State Board of Podiatry Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license which was originally lawfully issued by that Board.

"Sec. 4. Severability Clause. The provisions of this Act are severable. If any word, phrase, sentence, section, provision or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part."

#### Art. 4571. Annual Renewal Fee; Lost or Destroyed License; Display of License and Certificate

It shall be the duty of the Secretary-Treasurer of the Texas State Board of Chiropody Examiners on or before August first of each year to notify, by mail, all Texas licensed Chiropodists at their last known address that the annual license renewal fee is due on September first of each year. Every registered Chiropodist shall renew his license on or before September first of each year by the payment of an annual license renewal fee of Twenty Dollars (\$20) to

the Secretary-Treasurer of the Texas State Board of Chiropody Examiners. If such renewal fee is not paid on or before December first, the delinquent licensee shall be notified by mail at his last known address by the Secretary-Treasurer that such fee is due and unpaid and a delinquent penalty of Twenty Dollars (\$20) is assessed and shall be paid on or before January first. If such fees are not paid by January first, it shall be the duty of the Texas State Board of Chiropody Examiners to suspend or revoke the said license for nonpayment of the annual renewal and delinquent fees for the current year. The Board shall notify the district clerk of the county in which such license may have been recorded and such clerk, upon receipt of notification from said Board, shall enter upon the chiropody register of such county the fact that such license is suspended or revoked for nonpayment of the annual renewal fee, and shall notify the Board in writing that such entry has been made. Practicing chiropody without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and subject to all penalties of practicing chiropody without a license. After the Board has declared a license suspended or revoked, as provided for in this Act, the Board may thereafter in its discretion refuse to reinstate such license or issue a new license until such chiropodist, whose license has been declared suspended or revoked for nonpayment of annual renewal fee, has passed a regular examination for license. Any license issued by this Board, that may be lost, destroyed or stolen from the legally qualified and authorized person to whom it was issued, shall be reported to the Secretary-Treasurer of the State Board of Chiropody Examiners, in affidavit form and such affidavit shall set forth detailed information as to its loss, destruction or theft; giving dates, place and circumstances. A duplicate license shall be issued upon regular application of the owner of the original license and payment of the fee of Ten Dollars (\$10) to the Board for such license; provided however that the Board shall not issue a duplicate license until sufficient evidence by the owner of the original license has been submitted and proven to be lost, and that the records of the Board show a license had been issued and being in full force and effect at the time of such loss, destruction or theft.

#### Recording of License

Each district clerk in this State shall purchase a book of suitable size to be known as the "Chiropody Register" and set apart at least one (1) full page for the registration of each chiropodist and record in said chiropody register the name and address of each chiropodist who presents for record a license or certificate issued by the Texas State Board of Chiropody Examiners. The district clerk shall receive One Dollar (\$1) for each document registered as provided in this Article, which shall be his full compensation for all duties herein re-

quired. When a chiroprapist shall have his license revoked, said district clerk, upon being notified by the Texas State Board of Chiroprapist Examiners, shall make a note of the fact beneath the record in the chiroprapist register which entry shall close the record. On the first day of January in each year, said district clerk shall, upon the request of the Texas State Board of Chiroprapist Examiners, certify to the Secretary-Treasurer of the said Board a correct list of the chiroprapists then registered in the county, together with such other information that the said Board may require. The absence of record of such license in the district clerk's office shall be prima-facie evidence of the lack of possession of such license to practice chiroprapist.

#### Exhibit of License and Renewal Certificate

Every person licensed by the State Board of Chiroprapist Examiners to practice in the State of Texas shall conspicuously display both his license and an annual renewal certificate for the current year of practice in the place or office wherein he practices and shall be required to exhibit such license and renewal certificate to a representative of the Board upon such representative's official request for its examination or inspection.

Any licensed chiroprapist whose license has been suspended or revoked or whose annual renewal certificate has expired while he has been engaged in Federal service or on active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, or the United States Maritime Service or the State Militia, called into service or training of the United States of America or in the training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without paying any lapsed renewal fee or without passing any examination, if, within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Chiroprapist Examiners with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Acts 1925 S.B. 84; Acts 1939, 46th Leg., p. 368, § 4; Acts 1951, 52nd Leg., p. 219, ch. 132 § 4.]

#### Renewal Fee

*Acts 1967, 60th Leg., p. 181, ch. 96, § 4 provides: "The annual license renewal fee for all registered podiatrists (heretofore chiroprapists), prescribed by the provisions of Article 4571, Revised Civil Statutes of Texas, 1925, as amended, is \$25."*

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name of chiroprapist to podiatry and are codified as article 4567a; section 5 thereof increased the per diem allowance of the members of the Board of Podiatry Examiners and is set out as a note under article 4574; and section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

#### Art. 4571a. Expiration Dates of Registrations; Proration of Fee

The board by rule may adopt a system under which registrations expire on various dates during the year, and dates for sending notice that payment is due and dates of suspension or revocation for non-payment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

[Acts 1973, 63rd Leg., p. 625, ch. 266, § 10, eff. June 11, 1973.]

#### Art. 4572. Repealed by Acts 1951, 52nd Leg. p. 219, ch. 132 § 5

#### Art. 4573. Revocation, Cancellation, and Suspension of License

(a) The Texas State Board of Podiatry Examiners may cancel, revoke, or suspend the license of any practitioner of podiatry upon proof of the violation of the law in any respect with regard to the practice of podiatry, or for any cause for which the Board may refuse to admit persons to its examinations, as provided in Article 4570, Revised Civil Statutes of Texas, 1925, as amended.

(b) Any person or persons may initiate proceedings under this Article by filing charges with the Texas State Board of Podiatry Examiners in writing and under oath. The President of the Texas State Board of Podiatry Examiners shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel, and the person or persons filing the charges or their counsel, at least ten (10) days prior to the hearing. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent and the person or persons filing the charges at their last known address as shown by the records of the Board. When publication of the notice is necessary, the date of hearing shall be not less than ten (10) days after the date of the last publication of the notice. The person or persons filing the charges and the respondent have the right to appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board may also issue subpoenas on its own motion. The subpoenas of the Board may be enforced through any district court having jurisdiction and venue in the county where the hearing is held. The Board shall determine the charges

upon their merits. All charges, complaints, notices, orders, records and publications authorized or required by the terms of this Article are privileged.

(c) Any person whose license to practice podiatry has been cancelled, revoked or suspended by order of the Board may, within twenty (20) days after the making and entering of the order, but not thereafter, take an appeal to any district court having jurisdiction and venue in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to the district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule.

(d) The Board may, upon majority vote, rule that the order revoking, cancelling, or suspending the practitioner's license be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time constituting the probationary period.

(e) At any time while the probationer remains on probation, the Board may hold a hearing and, upon majority vote, rescind the probation if the terms of the probation have been violated, and enforce the Board's original action in revoking, cancelling, or suspending the practitioner's license. The hearing to rescind the probation shall be called by the President of the Texas State Board of Podiatry Examiners, who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer. The notice shall be served on the probationer or his counsel, and any person or persons complaining of the probationer or their counsel, at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service set out in Subsection (b) of this Article shall apply. The respondent and any person or persons complaining of the respondent have the right to appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board may also issue subpoenas on its own motion. The subpoenas of the Board may be enforced through any district court having jurisdiction and venue in the county where the hearing is held. The Board shall determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Article are privileged. The order revoking or rescinding the probation is not subject to review or appeal.

(f) Upon application, the Board may reissue a license to practice podiatry to a person whose license has been cancelled or suspended, but the application, in the case of cancellation or revocation, may not be made prior to one (1) year after the cancellation or revocation,

and shall be made in such manner and form as the Board may require.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 1035, ch. 203, § 2, eff. Aug. 30, 1971.]

#### Art. 4574. Compensation and Expenses

Each member of the board shall receive for his services ten dollars a day and necessary traveling and incidental expenses, while actually engaged in the service of the board. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of said fees which accrue to it.

[Acts 1925, S.B. 84.]

#### Per Diem Allowance

*Acts 1967, 60th Leg., p. 181, ch. 96, § 5 provides: "The per diem for members of the Texas State Board of Podiatry Examiners is \$25 for each day engaged in the performance of their official duties."*

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name of chiropody to podiatry and are codified as article 4567a; section 4 thereof increased the annual license renewal fee and is set out as a note under article 4571; section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

#### Art. 4575. Exceptions

This law shall not apply to the physicians licensed by the State Board of Medical Examiners, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. Provided, further, that nothing in this Act shall prohibit the recommendation, advertising or sale of corrective shoes, arch supports or similar mechanical appliances, foot remedies by manufacturers, wholesalers or retail dealers. Nothing in this Act shall apply to bona fide members of an established church for the purpose of ministering or offering to minister to the sick or suffering by prayer as set forth in the principles, tenets, or teachings of the church of which they are bona fide members.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 219, ch. 132 § 6.]

#### Art. 4575a. Enjoining Violation of Chapter

The Texas State Board of Podiatry Examiners may institute actions in its own name to enjoin a violation of any of the provisions of Chapter 11, Title 71 of the Revised Civil Statutes of Texas, 1925, as amended, consisting of Article 4567 through Article 4575, inclusive, Revised Civil Statutes of Texas, 1925, as amended, and to enjoin any person from performing an act constituting the practice of podiatry unless authorized by law. The Attorney General or any district or county attorney shall represent the Texas State Board of Podiatry Examiners in such court action.

[Acts 1967, 60th Leg., p. 182, ch. 96, § 6, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name chiropody to podiatry and are codified as article 4567a; section 4 thereof increased the annual license renewal fee and is set out as a note under article 4571; and section 5 thereof increased the per diem allowance of the members of the Board of Podiatry Examiners and is set out as a note under article 4574.

## CHAPTER TWELVE. EMBALMING

### Article

4576. Omitted.  
 4576a to 4581. Repealed.  
 4582. Provisions Do Not Apply.  
 4582a. Repealed.  
 4582b. Funeral Directing and Embalming.

### Art. 4576. Omitted

This article, derived from Acts 1903, p. 123, Rev. Civ. St. 1911, arts. 4596 to 4598, as amended by Acts 1935, 44th Leg., p. 745, ch. 324, § 1, contained provisions the subject matter of which was covered by Acts 1939, 46th Leg., p. 375, incorporated in article 4576a.

### Arts. 4576a to 4581. Repealed by Acts 1953, 53rd Leg., p. 661, ch. 251, § 7

See, now, article 4582b.

### Art. 4582. Provisions Do Not Apply

Nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead.

[Acts 1925, S.B. 84.]

### Art. 4582a. Repealed by Acts 1953, 53rd Leg., p. 661, ch. 251, § 7

This article, derived from Acts 1935, 44th Leg., p. 676, related to funeral directing and embalming. The subject matter is now covered by article 4582b.

### Art. 4582b. Funeral Directing and Embalming

#### Definitions

Sec. 1. A. A "funeral director" as that term is used herein, is a person engaged in or conducting, or holding himself out as being engaged in:

1. Preparing, other than by embalming, for the burial or disposition of dead human bodies; and
2. Maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

B. The term "directing a funeral," or "funeral directing" as herein used, shall mean the directing or personal supervision by a licensed funeral director from the time of the first call until interment or entombment services are completed, or until the body is delivered into the hands of the persons in charge of a crematorium, or until the body is delivered to another funeral director or to a public carrier.

C. The term "first call" shall mean the beginning of the relationship and duty of the funeral director to take charge of a dead human body and have same prepared by embalming, cremation, or otherwise, for burial or disposition, provided all laws pertaining to public health in this state are complied with. "First call" does not include calls made by ambulance, when the person dispatching the ambulance does not know whether a dead human body is to be picked up. A dead human body shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer. A dead human body may be transferred from one funeral home to another funeral home and to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer.

D. The term "embalmer" as herein used is a person who disinfects or preserves a dead human body, entire or in part by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities, or by any other method intended to disinfect or preserve a dead human body, or restore body tissues and structures. The placing of any such chemicals or substances on or in a dead human body by any person who is not a licensed embalmer shall be deemed a violation of this Act, provided that this shall not apply to a registered apprentice working under the supervision of a licensed embalmer. All persons who are engaged in the business of embalming or who profess to be engaged in such business, or hold themselves out to the public as embalmers, shall be licensed embalmers.

E. The term "apprentice" as herein used is a person engaged in learning the practice of funeral directing and/or embalming under the instruction, direction, and personal supervision of a duly licensed funeral director and/or embalmer of and in the State of Texas in accordance with the provisions of this Act, and having been duly licensed as such by the Board prior thereto.

F. The term "apprenticeship" as used herein shall be construed as diligent attention to assigned duties and other subject matter in the course of regular employment in a licensed funeral establishment in this state. This regular employment must involve at least forty (40) working hours per week which may be cumulated in any manner under actual working conditions and under the personal supervision of a licensee, in order for an apprentice to qualify as a licensed funeral director and/or embalmer.

G. The term "funeral establishment" as herein used is a place of business used in the care and preparation for burial or transportation of dead human bodies, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be engaged in the busi-



ness of embalming and/or funeral directing, or as so engaged. Such funeral directing and embalming shall be performed only under the supervision and direction of a licensed funeral director and/or embalmer.

H. The term "due notice" as herein used shall mean published notice of the time and place of regular meetings of the Board. Notice of time, place, and purpose of any meeting of the Board published in at least three (3) daily newspapers in three (3) separate cities in the state, at least fifteen (15) days prior thereto, shall be adequate notice for any regular meeting, including the giving of examinations; however, a notice of a meeting wherein a change in the rules and regulations of the Board is to be considered, shall be given by written notice to all licensees in the State of Texas, at the address registered with the Board, at least thirty (30) days in advance of any hearing thereon.

I. The term "mortuary science" as herein used, shall mean the scientific, professional and practical aspects, with due consideration given to accepted practices, covering the care, preparation for burial or transportation of dead human bodies, which shall include the preservation and sanitation thereof and restorative art, and as such is related to public health, jurisprudence, and good business administration.

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction in the fundamental subjects as set forth herein:

- (a) mortuary management and administration;
- (b) legal medicine and toxicology as it pertains to funeral directing;
- (c) public health, hygiene and sanitary science;
- (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics;
- (e) anatomy and physiology;
- (f) chemistry, organic and inorganic;
- (g) pathology;
- (h) bacteriology;
- (i) sanitation and hygiene;
- (j) public health regulations; and
- (k) other courses of instruction in fundamental subjects prescribed by the Board.

K. An "official application blank," as that term is used herein, is a sheet bearing blank spaces for the entering of stipulated information, which sheet shall be filled in by any person who seeks employment as funeral director

or embalmer in this state. The form of this application blank shall be prescribed by the Board. Prospective employers shall have job applicants fill in this application blank and shall remit it upon completion to the Board. The Board shall inform employers as soon as possible of the status of the license of any person for whom it receives an official application blank.

L. A "commercial embalmer" is one who embalms for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public, and shall otherwise meet the requirements of a licensed embalmer as provided in Section 3 of this Act.

#### The Board

Sec. 2. A. There is hereby created the State Board of Morticians, with offices located in Austin, Texas, consisting of six (6) members who shall be citizens of the United States and residents of the State of Texas, and shall be licensed embalmers and funeral directors in the State of Texas. Each shall have a minimum of ten (10) years, consecutively, of such experience in this state immediately preceding appointment. The members of said Board shall be appointed by the Governor, by and with the consent of the Senate for a period of six (6) years. Each member shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the Board any member whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. The Governor, in appointing members to the Board, shall designate their terms so that two (2) places on the Board shall become vacant each two (2) years. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No member of the Board shall be appointed for more than two (2) terms of service. No member shall be appointed to the Board who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another member of the Board is also an officer or employee of the same corporation or other business entity.

B. The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other state officials, which oath shall be filed in the office of the Secretary of State, after having been administered under proper authority. Each person appointed to the Board shall be furnished with a certificate of appointment by the Governor which shall bear evidence of the taking of oath of office.

C. The Board shall meet in Austin, Texas, in regular session at least two (2) times each year for the transaction of business. Examination for funeral directors and embalmers shall be held at least once during each year at such times and places as the Board may designate and give due notice thereof. Special meetings

or hearings may be held at such time and place as may be determined by and upon call of the President, Vice-President or three (3) members of the Board.

D. The Board shall elect a President, Vice-President, and Secretary from the members of the said Board who shall serve two (2) years, or until their successors shall be elected and qualified. In the absence of an Executive Secretary, the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the Board and any premium payable for such bond shall be paid from the funds of the Board; likewise, the Board will require a bond of the Executive Secretary, if any, and such bond shall be deposited with the State Auditor of the State of Texas. The Secretary shall deliver all money on hand at the end of his term of office to his successor, and the Executive Secretary shall deliver all money on hand to the Secretary upon relief from duty. The President of the Board shall preside at all meetings of the Board unless otherwise ordered, and he shall exercise all duties and performances incident to the office of the President of the Board, and in his absence the Vice-President shall preside. A majority of the membership of the Board shall constitute a quorum for the transaction of business.

E. The Board shall make an annual report covering the work of the Board for the preceding fiscal year, and such report shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor or a Certified Public Accountant;

2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy of this report shall be furnished each licensed funeral director and embalmer in this state. A copy shall likewise be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts.

F. The Board shall preserve a record of its proceedings in a book kept for that purpose.

G. The Board shall keep a permanent, alphabetical record of all applications for licenses and the action thereon. Such records shall also show, at all times, the current status of all such applications and licenses issued.

H. The Board may employ such inspectors, and clerical and technical assistants, legal counsel, including an Executive Secretary, as may be determined by it to be necessary to carry out the provisions of this Act, and the terms, conditions and expenses of such employment shall be determined by the Board.

I. Membership of the Board shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the Board, and in addition thereto, each shall re-

ceive a per diem allowance of Twenty-five Dollars (\$25) for each day actually spent by such member upon attendance to the business of the Board, not to exceed fifty (50) days within a calendar year. The Secretary, in the absence of an Executive Secretary, notwithstanding membership on the Board, shall receive and be paid a salary for the time he devotes to the business of the Board, and the amount and method of payment shall be fixed by the Board and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the Board. All fees received under the provisions of this law in excess of the necessary and proper expenses of the Board shall be held by the Secretary of the Board as a special fund with which to pay the expense of the Board in administering and enforcing this Act. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

J. Except as otherwise provided by law, all records of the Board shall be open to inspection by the public during regular office hours.

K. All meetings of the Board shall be open and public.

L. The Board shall prescribe the form of the official application blank. It shall notify the proprietor of each licensed funeral establishment in this state that any person who seeks employment as a funeral director or embalmer must fill in this application blank, and that the person receiving the application must mail a copy of the official form to the Board. The Board shall inform the prospective employer of the status of the applicant's license to engage in the activity he proposes.

M. The Board may adopt such administrative procedures as may be desirable to effect the intent of the provisions of this Section.

#### Licenses—Funeral Directors and Embalmers

Sec. 3. A. The Board is hereby authorized and empowered and it shall be its duty to prescribe and maintain a standard of proficiency, character and qualifications of those engaged or who may engage in the practice of a funeral director or embalmer and to determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to collect the fees therefor. The Board shall examine all applicants for funeral directors' and embalmers' licenses and for apprenticeship licenses and shall issue the proper license to all persons qualified and who meet requirements herein prescribed.

B. The minimum requirements for the issuance of licenses by this Board to practice fu-

neral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the Board to be not less than twenty-one (21) years of age,<sup>1</sup> a resident of the State of Texas, and a citizen of the United States, of good moral character, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the Board through oral and written examination as to his proficiency by examination on the subjects of:

- (a) The art and technique of funeral directing;
- (b) signs of death;
- (c) the manner by which death may be determined;
- (d) sanitation;
- (e) hygiene;
- (f) mortuary management and mortuary law;
- (g) business and professional ethics;
- (h) laws applicable to vital statistics pertaining to dead human bodies;
- (i) rules and laws governing preparation, transportation and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science.

2. For a license to practice embalming: the applicant shall have been found by the Board to be not less than twenty-one (21) years of age,<sup>1</sup> a resident of the State of Texas, and a citizen of the United States, of a good moral character having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for two (2) years under the personal supervision of a licensed embalmer, and having satisfied the Board as to his proficiency through oral and written examination on the subjects of:

- (a) anatomy of the human body;
- (b) the cavities of the human body;
- (c) the arterial and venous system of the human body;
- (d) blood and discoloration;
- (e) bacteriology and hygiene;
- (f) pathology;
- (g) chemistry and embalming;

- (h) arterial and cavity embalming;
- (i) restorative art;
- (j) disinfecting;
- (k) embalming special cases;
- (l) contagious and infectious diseases;
- (m) mortuary management;
- (n) care, preservation, transportation and disposition of dead human bodies;
- (o) laws applicable to vital statistics pertaining to dead human bodies;
- (p) sanitary science; and such other subjects as may be taught in a recognized school or college of mortuary science, and shall at the request of the Board, demonstrate his proficiency as embalmer.

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

C. The Board is hereby authorized and empowered and it shall be its duty to approve a course of instruction to be given by any college of mortuary science or recognized school of higher learning that desires to be approved by the Board. And it shall be the duty of the Board to examine and supervise the activities of an accredited school or college of mortuary science so as to insure that said college or school is meeting the requirements of the Board.

D. It shall be the duty of the Board to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served an apprenticeship period of not less than twenty-four (24) months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of apprenticeship. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this Board, and, in the discretion of the Board, is of good moral character and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. Apprenticeship for a license to practice the science of embalming may be served in two ways: (1) the applicant may apply for and serve twelve (12) months apprenticeship before entry into a school of embalming or college of mortuary science, and the remaining

twelve (12) months after graduation from such school or college and after successfully taking the Board's examination for embalming as prescribed herein; or (2) the applicant may serve the full twenty-four (24) months period after completing and graduating from a school or college of mortuary science and after successfully taking the Board's examination for embalming as prescribed herein. No part of the apprenticeship time may be served during the year in which the applicant is attending a school or college of mortuary science as defined herein. Applicant shall pay a fee not to exceed Ten Dollars (\$10) at the time he requests such apprenticeship registration.

(1) A person qualifying in this manner shall serve at least one (1) year of apprenticeship immediately following the successful passing of the written examination accorded him by the Board.

(2) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the Board upon payment of a fee not to exceed Ten Dollars (\$10) therefor, shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the Board to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of one hundred (100) dead human bodies, ten (10) of which bodies the apprentice shall embalm after the first year of apprenticeship without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days thereof of each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. Throughout the period of apprenticeship, the apprentice shall report on at least one (1) such case of embalming each calendar month, within the month. In any month in which he did not embalm at least one (1) case under the direction of a licensed em-

balmer a report shall be made to the Board notwithstanding.

2. Apprentice for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the Board on a form provided by the Board, and if the Board desires, he shall appear before at least one (1) member of the Board, or a designated representative thereof, for approval of his application, subject to review of it by the entire Board. Applicant must be not less than nineteen (19) years of age, a person of good moral character and have completed the educational requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve apprenticeship therefor in like manner to that of one who has applied for a license to practice the science of embalming, by serving one (1) year of apprenticeship prior to completing a course of study in funeral directing prescribed by the Board and graduating from a school of embalming or college of mortuary science. The application for registration shall be sworn to and accompanied by a fee of not to exceed Ten Dollars (\$10). If the application is accepted, applicant will be issued a certificate of apprenticeship registration upon determination by the Board that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to graduation from a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written, oral and practical examinations given by the Board, and the payment of a fee of not to exceed Ten Dollars (\$10) therefor, whereupon he shall be registered as an apprentice. Provided, however, applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days thereof of each separate case with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed the work. Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In any

month within which he did not assist a funeral director in handling a funeral, a report shall be made to the Board notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of not less than one hundred (100) dead human bodies, ten (10) of which bodies the apprentice shall handle, after graduation from an approved school of embalming or college of mortuary science, where one (1) year of apprenticeship was served prior to entrance into an institution for preparation by him to become a funeral director. The Board may require other evidence of his ability, in its discretion. No more than two (2) apprentices may receive credit for work done on any one body.

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the Board to an apprentice embalmer or apprentice funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the apprentice of a renewal fee not to exceed Ten Dollars (\$10), provided the apprentice has conducted himself with propriety and observed the rules and regulations of the Board with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If the renewal fee is not paid on or before the 31st day of January in the year in which it became due, a penalty in the sum of not to exceed Ten Dollars (\$10) will be added to the renewal fee of each certificate when paid. Fifteen (15) days after the grace period as above provided, if said annual renewal fee and penalty still remain unpaid, it shall be the duty of the Board, acting through its Secretary, to suspend his certificate for nonpayment of the annual renewal fee and to notify such apprentice of such suspension by registered mail, addressed to his last known address. If the said renewal fee and penalty is not then paid within thirty (30) days from the date of such notice of suspension, the Board shall then cancel such certificate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the Board may, in its discretion, reinstate said apprentice provided he meets all other requirements of the Board. It is provided that the registration fee of any apprentice who is actively engaged in the military service of the United States may, in the discretion of

the Board, be remitted for the duration of such service or for such fees and such time as the Board may deem advisable upon presentation of proper evidence required by the Board.

3a. The board by rule may adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due, the dates of the grace period, the date on which penalty attaches, and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.

4. Notification of the Board upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the Board the name and place of business of the licensed embalmer or funeral director whose service he has entered and the name of the funeral director or embalmer under whom he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter such apprentice leaves the employ of the licensed embalmer or funeral director whose services he has entered, the said licensed embalmer or funeral director shall give to such apprentice an affidavit showing the length of time he has served as an apprentice with him and the number of cases handled while so employed; the original of said affidavit shall be filed with the Board and made a matter of record, and a copy shall be furnished to the apprentice. The Board shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the Board's examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. Certificate of Apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H.

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the Board for

a license accompanying same with a fee not to exceed Fifty Dollars (\$50). The license or licenses when issued shall be signed by a majority of the Board and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be registered in the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be displayed conspicuously in the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall annually pay to the Secretary of the said Board a fee not to exceed Ten Dollars (\$10) for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable annually on the 31st day of May, and the Board will give written notice on or before April 1st, of each year that the license fees are due and payable. When a licensee under this Act shall fail to pay his annual registration fee, it shall be the duty of the Board to notify such licensee at his last known address that his annual registration fee is due and unpaid and that a penalty equal to the amount of the registration fee has been added. If such fee and penalty are not paid within fifteen (15) days after notification by regular mail, it shall be the duty of the Board to suspend the license and notify the licensee by certified mail, return receipt requested, of such suspension. Thirty (30) days after the Board shall have declared a license suspended, as provided herein, the license shall be automatically cancelled and the Board may thereafter in its discretion refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the State Board of Morticians, on a form to be prescribed by the Board, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the State Board of Morticians shall require, and shall, upon payment of a fee not to exceed Ten Dollars (\$10), as determined by the Board, be granted a duplicate license; provided further, that the same fee as set forth above for duplicate licenses shall also apply to endorsements by the Board.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed an oral and practical examination by the Board on embalming and/or an oral examination on funeral directing.

2. The board by rule may adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding payment of fees and dates for license suspension for nonpay-

ment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on May 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

F. (1) The Board is authorized to make certain reciprocal arrangements. The State Board of Morticians may in its discretion, upon payment by an applicant of a fee of One Hundred Dollars (\$100), grant a license to practice as a funeral director and/or embalmer to persons who furnish proof that they have been registered for at least three (3) years as such, in some other state or territory of the United States; provided that the licensing board of such other state or territory in its examination requires the same general degree of fitness required by this state. Said application shall be accompanied by an affidavit made by the President or Secretary of the Board of Mortician Examiners which issued the license, or by a duly constituted registration officer of the state or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or a misdemeanor involving moral turpitude.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the Board. At the end of one (1) year, the holder of said temporary permit shall again be considered by the Board, and if his application for license has been maintained and he meets all other requirements, the Board, in its discretion, may grant said applicant a license.

G. Licenses currently outstanding shall be recognized under this Act. Any person, personally holding a current funeral director's and/or embalmer's license granted by the proper authorities in this state, shall not be required to make application for or submit to an examination, but shall be entitled to a renewal of his license, upon expiration of such current license, under the terms and conditions as herein provided for the renewal of licenses of those who may be licensed after the passage of this Act. All such persons shall be subject to every other provision of this Act.

H. The State Board of Morticians is hereby authorized and empowered and it shall be its duty to conduct hearings to revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may refuse to admit persons to examination for any of the following reasons:

1. The presentation to the Board of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;
2. Conviction of a crime of the grade of a felony or of a misdemeanor involving moral turpitude;
3. Unfit to practice as a funeral director and/or embalmer by reason of insanity or has been adjudged by a court of competent jurisdiction to be of unsound mind;
4. The use of any advertising statement of a character which misleads or deceives the public, or use, in connection with advertisements, the names of persons who do not hold a license as a funeral director or embalmer and represent them to be so licensed;
5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Board of Morticians for license to practice as a funeral director and/or embalmer;
6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;
7. The use of any funeral director and/or embalmer license, certificate, diploma, or transcript of any such funeral director and/or embalmer license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;
8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;
9. The impersonation of a licensed funeral director or embalmer as authorized hereunder, or permitting, or allowing another to use his license, or certificate to

practice as a funeral director or embalmer or mortician in this state, for the purpose of embalming or practicing the science of embalming, in connection with the care and disposition of the dead, or acting as a funeral director or practicing as a funeral director in this state, in connection with the care and disposition of the dead;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a deceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Refusing to promptly surrender a dead human body, upon the express order of a person in possession of lawful authority therefor, to a licensed funeral director or embalmer or an agent or employee of the same;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of drug addiction; and

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under the provisions of Article 548b, Vernon's Texas Civil Statutes, or Senate Bill No. 129, Acts of the 58th Legislature, Regular Session, 1963.

17. Failure by the Federal Director in Charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call," as that term is defined in this Act.

18. Conduct by a licensee which, in the discretion of the Board, after applying contemporary community standards, is found to be offensive to the common conscience and moral standards of the community where such conduct occurs.

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee.

20. Conviction by the Board, after a hearing as provided in this Act, of fraud or other similar deception against the public.

I. The Board may issue such rules and regulations as may be necessary or desirable to effect the intent of the provisions of this Section.

#### Funeral Establishments

Sec. 4. A. All funeral establishments shall be licensed by the Board. All licenses shall expire at midnight on September 30th of each year. The license fee shall not exceed Fifty Dollars (\$50) for issuance of licenses to existing establishments and for renewal licenses. Funeral establishments created after the effective date of this Act shall apply for a license, and upon satisfaction to the Board that this Section has been complied with and upon receipt of the licensing fee, which shall not exceed Two Hundred Fifty Dollars (\$250), an initial license shall be duly issued to such new establishments. Not later than thirty (30) days prior to the expiration date of licenses, the Board shall cause to be issued notification in writing by mail to each licensed funeral establishment that a renewal fee not to exceed Fifty Dollars (\$50) must be paid by October 1st before such license shall be renewed, and upon due receipt of such fees all existing licenses shall be considered automatically renewed. Any establishment which fails to pay its license renewal fee as herein provided within thirty (30) days after September 30th may be required by the Board to pay a penalty of Fifty Dollars (\$50) in addition to the regular fee, and if the delinquency is more than thirty (30) days, the establishment shall not be permitted to operate as a funeral home until it has applied for and has been granted a new license as in the case of original applications and licenses for new funeral establishments.

B. No funeral establishment shall conduct funeral business as intended under this Act unless duly licensed.

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Adequate facilities in which funeral services may be conducted;
2. A preparation room being used by such establishment that meets the sanitary code of the State of Texas and the municipality in which same is located;
3. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;
4. Access to rolling stock consisting of at least one motor hearse;
5. A preparation room that is secluded from the public, properly ventilated, and containing an operating table, sewer facilities, hot and cold running water, and suf-

ficient instruments and chemicals to embalm a dead human body;

6. A display room containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets;

7. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

8. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

9. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a funeral establishment license, but shall not be required to meet the requirements of sub-sections 1 and 6 of this paragraph C.

D. 1. The Board may initiate formal complaint or other action against a funeral establishment or in regard to the license of a funeral establishment only upon the following grounds:

(a) Failure of a funeral establishment to substantially comply with the provisions of Subsection B or C of this Section.

(b) Conducting or operating a funeral establishment in a manner which, in the discretion of the Board, after applying contemporary community standards, is found to be offensive to the common conscience and moral standards of the community where the funeral establishment is licensed or where such offensive conduct occurred.

(c) The use of any advertising statement of a character which misleads or deceives the public, or use, in connection with advertisements, the names of persons who do not hold a license as a funeral director or embalmer and represent them to be so licensed;

(d) Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under the provisions of Article 548b, Vernon's Texas Civil Statutes, or Senate Bill No. 129, Acts of the 58th Legislature, Regular Session, 1963.

(e) Failure by the funeral director in charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call" as that term is defined in this Act.



Provided, however, with respect to alleged violations of Subsection D-1(b), (c), (d), and (e), the Board may not initiate formal complaint or other action against a funeral establishment or in regard to the license of a funeral establishment when the ground or grounds of complaint are based on the conduct of employees, agents or representatives of such establishment performed outside the scope and authority of their employment or contrary to the instructions of the funeral establishment and its management.

2. As to asserted violations of provisions of this Section, the Board shall have the following powers, rights and duties:

(a) The Board may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.

(b) The Board shall cause an investigation to be made whenever a complaint is filed with or by the Board. In any investigation or hearing by the Board, it may require the attendance of witnesses by issuing notices to witnesses and ordering them to appear and testify. The Board may require testimony to be given under oath or affirmation. Such notice to a witness shall be issued at the request of the Board or the accused licensee or the organization whose application for license has been denied. Such notice must be in writing and signed by presiding member of the Board, and shall notify the witness of the time and place to appear. Notice to a witness shall be served on him personally or by mailing same to him by registered mail, return receipt requested. Proof of such may be made by certificate of the person making the same, with return receipt attached when made by registered mail.

If any witness fails or refuses to appear before the Board, such witness shall be compelled by a Judge of any District Court to appear and testify at a hearing before such judge in the same manner as witnesses may be compelled to appear and testify in a civil suit in a District Court. Application for such hearing may be filed by any party to such proceedings in any District Court of the County in which such witness resides or may be found. The judge shall fix by order a time and place for such hearing and shall provide for such notice to the Board and the accused or the applicant for a license or certificate which has been denied as he determines proper. If such witness fails to appear or testify he shall be punished as in case of contempt.

(c) As to the licenses of funeral establishments, except when the accused admits a violation and agrees in writing to a judgment of the Board suspending or revoking the license in question or placing the accused on probation, the Board shall have no power or authority to suspend or revoke the license of the accused. How-

ever, the Board shall have the right to initiate a civil action in a District Court in the county in which the accused resides for the purpose of seeking a revocation or suspension of such license or probationary action all as hereinafter provided.

If the Board shall be of the opinion that the license of the accused should be revoked or suspended for a period not to exceed three years, and if the accused will accept a decision of the Board to such effect, it shall prepare a formal judgment and submit the same to him; and upon his agreement to its entry, evidenced by memorandum in writing signed and acknowledged by him, the Board shall enter judgment accordingly and the same shall have the force and effect of a judgment of the District Court of the county of the residence of the accused. A copy of the judgment, together with a copy of the complaint, shall be mailed to the clerk of the District Court of the county of residence of the accused for entry in the minutes of the court.

(d) The term "Accusation" or "Complaint" shall embrace all complaints brought before the Board. By the terms "civil suit," "court action" or "formal complaint" is meant the pleading by which disciplinary action is instituted by the Board in a District Court of this state.

The Texas rules of civil procedure shall govern the procedure in all proceedings under Civil Actions (Formal Complaint).

The District Attorney or the County Attorney of the county of residence of the accused licensee as defendant, or the Attorney General or such counsel as the Board may designate shall represent the Board as it shall determine.

The formal complaint shall be the pleading by which the proceeding is instituted. The formal complaint shall be filed in the name of the Texas State Board of Morticians as plaintiff against the accused licensee as defendant and shall set forth the violation with which the defendant is charged. The prayer may be that the defendant "be placed on probation or his (its) license suspended or revoked as the facts shall warrant."

The answer of the defendant to the formal complaint shall either admit or deny each allegation of the petition, except where the defendant is unable to admit or deny the allegation, in which case defendant shall set forth the reasons he (it) cannot admit or deny.

Proceedings under formal complaint shall be entitled to preferred setting at the request of either party.

If the court shall find from the evidence in a case tried without a jury, or from the verdict of the jury, if there be one, that the defendant is guilty of no violation, he shall enter judgment so declaring and dis-

miss the complaint; but if he shall find the defendant guilty, he shall determine whether the party shall be (a) placed under probation (in which case he shall specify the terms thereof), (b) the license suspended (in which case he shall fix the term of suspension), or (c) the license revoked; and he shall enter judgment accordingly. If the judgment be one finding the defendant guilty as aforesaid, it shall direct transmittal of certified copies of the judgment and complaint to the Secretary of the Board of Morticians; and the latter shall make proper notation on the membership rolls.

At any time after the expiration of one year from the date of final judgment or revocation of a license, such party may petition the District Court of the county of his residence for reinstatement. Notice of such action shall be given to the Secretary of the State Board of Morticians.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Section. Said action for an injunction shall be in addition to any other action, proceeding, or remedy recognized by law. The Board shall be represented by counsel designated by it, or, by the Attorney General and/or County and District Attorney of this state.

E. Each funeral establishment shall designate to the Board a funeral director in charge, and such funeral director in charge shall be directly responsible for the funeral directing and embalming business of the licensee. Any change or changes in such designation shall be given to the Board promptly.

F. The Board may issue such rules and regulations as shall comply with and shall effect the intent of the provisions of this Section.

G. Any premises on which funeral directing or embalming is practiced shall be open at all times to inspection by any agent of the Board or by any duly authorized agent of the state or of the municipality in which the premises are located. Each licensed funeral establishment shall be thoroughly inspected at least once each year by an agent of the Board or by an agent of the state or a political subdivision thereof whom the Board has authorized to make inspections on its behalf. A report of this annual inspection shall be filed with the Board.

#### Rules and Regulations

Sec. 5. A. The Board is authorized to promulgate such rules and regulations as it may deem advisable governing the granting, suspension and revocation of licenses as prescribed by the provisions of this Act.

B. Whenever it is provided in this Act that the Board may or shall issue any rules and regulations, such rules and regulations thereunder proposed shall be effective only after due notice and hearing.

#### Revocation, Cancellation or Suspension of Licenses of Funeral Directors, Embalmers and Apprentices

Sec. 6. The State Board of Morticians shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

Proceedings under this Section shall be initiated by filing charges with the State Board of Morticians in writing and under oath. Said charges may be made by any person or persons. The President of the State Board of Morticians shall set a time and place for hearing, shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to reside and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records and publications authorized or required by the terms of this Act shall be privileged.

Any licensed funeral director and/or embalmer whose license has been revoked, suspended or renewal refused, or a person to whom the Board has refused to issue a license under this Act, shall have the right of appeal, from any such decision of the Board to any District Court in the county in which he resides within twenty (20) days from and after the date the said Board announces its final decision. In a suit brought to review orders, decisions, or other acts of the Board, the trial shall be de novo as that term is used and understood in an appeal from a Justice of Peace Court to the County Court. The rights of the parties thereto shall be determined by the Court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this section. Upon application, the Board may reissue a license to practice as a funeral director or embalmer to a person whose license has

been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the Board may require.

The State Board shall have the power to appoint committees from the membership. The duties of any committees appointed from the State Board of Morticians membership may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the State Board of Morticians with respect thereto. The State Board of Morticians shall have the power, and may delegate the said power to any committee, to issue subpoenas, and subpoenas duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The State Board of Morticians shall not be bound by such rules of evidence or procedure, in the conduct of its proceedings, but the determination shall be founded on sufficient legal evidence to sustain it. The State Board of Morticians shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The State Board of Morticians shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the Board. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the Board shall hold a hearing in accordance with the procedure as set forth in this Act.

The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.

#### Acting Without License

Sec. 6A. Any person posing as a funeral director, embalmer, or apprentice, holding himself out to the public as a funeral director, embalmer, or apprentice as those terms are defined in this Act, without being properly licensed under this Act shall be guilty of a violation of this Act, and on complaint of the Board may be prosecuted and punished under the provisions of Section 7.

#### Certificate for Foreign Students

Sec. 6B. Any citizen of a country other than the United States who has completed a full course of mortuary science at a Board-approved college in Texas, may upon application to the State Board, and after payment of the same examination fee required of others, be given the Board examinations in either embalming, funeral directing or both, and, upon successfully making the minimum grades required of other applicants, may be awarded a

"Certificate of Merit" by the Board. Such certificate shall in no manner authorize a holder thereof to practice embalming and/or funeral directing in this state unless the holder is otherwise licensed as an embalmer and/or funeral director under the provisions of this Act.

#### Penalty

Sec. 7. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

#### Exemption

Sec. 8. Nothing herein shall be construed as requiring that funeral establishments be owned by licensed persons.

[Acts 1953, 53rd Leg., p. 661, ch. 251; Acts 1963, 58th Leg., p. 1283, ch. 494, § 1, eff. Sept. 1, 1963; Acts 1969, 61st Leg., p. 367, ch. 137, § 1, eff. May 6, 1969; Acts 1969, 61st Leg., p. 368, ch. 138, § 1, eff. May 6, 1969; Acts 1971, 62nd Leg., p. 2957, ch. 980, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 625, ch. 266, § 11, eff. June 11, 1973.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

Sections 2 and 3 of the 1971 amendatory act provided:

"Sec. 2. Severability. Every provision of this Act, every Section and every part of every Section, is hereby declared to be independent and severable insofar as this relation shall be necessary to the validity of this Act. Should any provisions of this Act be held to be invalid by a court of competent jurisdiction, for any reason, such holding shall not affect the validity of any remaining provision of this Act, it being the legislative intent that the Act shall stand, notwithstanding the invalidity of any such provision or Section; the fact that any provision, Section, or part of any Section, is void or invalid shall not be held to invalidate any other provision hereof.

"Sec. 3. Conflicts. All laws and parts of laws in conflict herewith are repealed to the extent of such conflict only."

## CHAPTER THIRTEEN. ANATOMICAL BOARD

#### Article

- 4583. Board and Duties.
- 4584. Regulations for Delivering Bodies.
- 4585. Distribution of Bodies to Institutions.
- 4585A. Delivery of Bodies to State Board of Embalming and to Schools of Embalming.
- 4586. Regulations for Moving Bodies.
- 4587. May Dissect Bodies.
- 4588. Parties Receiving Bodies to Give Bond.
- 4589. Expenses.
- 4590. Compensation of Board.
- 4590.1 Violating Anatomical Board Act.
- 4590-1. Repealed.

## Article

4590-2. Anatomical Gift Act.

4590-3. Human Transplantations and Blood Transfusions; Liability for Negligence; Cash Payment for Blood.

**Art. 4583. Board and Duties**

The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and of the several medical and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State.

[Acts 1925, S.B. 84.]

**Art. 4584. Regulations for Delivering Bodies**

All public officers, agents and servants of the state and all officers, agents and servants of any county, city, town, district, or other municipality, and of any other institution, having charge or control of dead bodies required to be buried at public expense, or bodies not claimed for burial, are hereby required (after notification in writing to do so by the Anatomical Board or its duly authorized officers, or persons designated by the authorities of said Board, then and thereafter) to announce to said Board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge or control, and must deliver such body at the discretion of the Anatomical Board, and permit the said Board and its agents, and the physicians and surgeons from time to time designated by it, who may comply with the provisions of this law, to take and remove any such body to be used within this state for the advancement of medical science.

No such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, may claim the said body for burial. The body shall be surrendered to the claimant, without payment to the authority in charge. To claim a body as a bona fide friend, an individual must present in writing a statement of the rela-

tionship considered to be proof of being a true bona fide friend. A similar written statement is also required of an individual representing an organization of which the deceased was a member.

A bona fide friend is herein defined as one who is "like one of the family" and is not an ordinary acquaintance. It does not include the people that follow: any officer, agent or servant of the state, or of any county, town, city, district, or other municipality and any almshouse, prison, morgue, hospital, mortuary, or any other institution having charge of dead human bodies required to be buried at public expense, or bodies not claimed for burial; any employee of these with which the deceased was associated; and any patient, inmate, or ward of the institution or institutions with which the deceased was associated. These exceptions do not apply in case the friendship existed prior to the time the deceased entered the institution.

If no claimant appears immediately after death, the body shall be embalmed within twenty-four hours. It is further required that due effort be made for a period of seventy-two hours by those in charge of such almshouse, prison, morgue, hospital, mortuary, or other institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and to notify them of the death. Failure by kindred or relation to claim such body within forty-eight hours after receipt of such notification shall be recognized as bringing such body under the provision of this law, and delivery shall be made as soon thereafter as may be possible to the Anatomical Board, its officers or agents. The person in charge of such institution shall file with the County Clerk an affidavit that he has made diligent inquiry to find the kindred or relatives of the deceased, stating what inquiry he has made. A body may be claimed by relatives within sixty (60) days after it has been delivered to an institution or other agency entitled to receive the same under the provisions of the law, and it shall be released to them without cost. Permission for autopsy of unclaimed bodies may be granted only by the Anatomical Board following a specific request to the Board showing sufficient evidence of medical urgency. If the body was that of a traveler who died suddenly, the Anatomical Board shall direct the institution receiving the body that it be kept for six months for purposes of identification.

Any inhabitant of the State of Texas of legal age and of sound mind may, by his will or by other written instrument, arrange for or prescribe that his body be used for the purpose of advancing medical science and that it be delivered to a medical school or dental school, or other donee authorized by the Anatomical Board. Any such bequest shall be by written instrument signed by the person making or giving the same and shall be witnessed by two (2) persons of legal age. No particular form or words shall be necessary or required for the

bequest or authorization, provided that the instrument conveys the clear intention of the person making the same. No appointment of administrator, executor, or court order shall be necessary before delivery of said body. The donor may revoke this disposition of his body at any time by execution of a written instrument in the same or similar manner as the original donation and bequest.

In the event any political subdivision or agency thereof, having charge or control of dead bodies required to be buried at public expense, or bodies not claimed for burial, is not required by the Anatomical Board to deliver said body to said Anatomical Board or parties of its designation, then in such event all costs of preparation for burial, including but not limited to embalming, shall be paid by the political subdivision. In the event, however, that said political subdivision is required by the Anatomical Board to deliver said body to said Anatomical Board or parties of its designation, then in such event all costs of transportation and/or preparation for burial or transportation, including but not limited to embalming, shall be paid by the Anatomical Board.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 328, ch. 152, § 1; Acts 1953, 53rd Leg., p. 361, ch. 87, § 1; Acts 1961, 57th Leg., 1st C.S., p. 147, ch. 36, § 1.]

#### Art. 4585. Distribution of Bodies to Institutions

The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive. [Acts 1925, S.B. 84.]

#### Art. 4585A. Delivery of Bodies to State Board of Embalming and to Schools of Embalming

The Board, or their duly authorized agents, may, upon receiving such bodies, deliver to the State Board of Embalming such number of the same as may be necessary for the use of said State Board of Embalming in conducting its semiannual examinations; and may further deliver to any School of Embalming in this State that is recognized and certified by the State

Board of Embalming such number of said bodies as the Board may in its judgment think necessary for use in instruction given in such School.

[Acts 1931, 42nd Leg., p. 310, ch. 184, § 1.]

#### Art. 4586. Regulations for Moving Bodies

The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. The sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, safely transmit to the sender a receipt for the same in the full terms of the description furnished by the sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this State.

[Acts 1925, S.B. 84.]

#### Art. 4587. May Dissect Bodies

Any and all schools, colleges, and persons who may be designated by said Anatomical Board shall be authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated.

[Acts 1925, S.B. 84.]

#### Art. 4588. Parties Receiving Bodies to Give Bond

No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the State by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dol-

lars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and that all experiments on the lower animals shall be conducted only for the promotion of medical science.

[Acts 1925, S.B. 84.]

#### Art. 4589. Expenses

Neither the State, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said Anatomical Board, or otherwise agreed upon.

[Acts 1925, S.B. 84.]

#### Art. 4590. Compensation of Board

No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board.

[Acts 1925, S.B. 84.]

#### Art. 4590.1. Violating Anatomical Board Act

Any person having duties imposed upon him by the provisions of the Anatomical Board Act who shall refuse, neglect or omit to perform any of them as required by said law, shall be fined not less than one hundred nor more than five hundred dollars for each offense.

[1925 P.C.]

#### Art. 4590-1. Repealed by Acts 1969, 61st Leg., p. 1176, ch. 375, § 9, eff. May 29, 1969

#### Art. 4590-2. Anatomical Gift Act

##### Short Title

Sec. 1. This Act may be cited as the Texas Anatomical Gift Act.

##### Definitions

Sec. 2. (a) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts."

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

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

##### Persons Who May Execute an Anatomical Gift

Sec. 3. (a) Any individual who has testamentary capacity under the Texas Probate Code may give all or any part of his body for any purpose specified in Section 4, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in Section 4:

- (1) the spouse,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of his death,
- (6) any other person authorized or under obligation to dispose of the body.

(c) If the donee, or the physician of a donee, has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after death or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 8(d).

##### Persons Who May Become Donees, and Purposes for Which Anatomical Gifts May be Made

Sec. 4. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

- (1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or
- (2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or
- (3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) any individual specified by a licensed physician for therapy or transplantation needed by him.

#### Manner of Executing Anatomical Gifts

Sec. 5. (a) A gift of all or part of the body under Section 3(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under Section 3(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 8(b), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in Section 3(b) shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

#### Delivery of Document of Gift

Sec. 6. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request

of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

#### Amendment or Revocation of the Gift

Sec. 7. (a) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of 2 persons and communicated to the donee, or

(3) a statement addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

#### Rights and Duties at Death

Sec. 8. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the surviving spouse or any other person authorized to give all or any part of the decedent's body may authorize embalming and have the use of the body for funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accordance with the terms of this Act, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act, so long as the prerequisites for an anatomical gift have been met under the laws applicable at the time and place of the making of the anatomical gift.

(d) The provisions of this Act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

[Acts 1969, 61st Leg., p. 1176, ch. 375, §§ 1 to 8, eff. May 29, 1969.]

**Art. 4590-3. Human Transplantations and Blood Transfusions; Liability for Negligence; Cash Payment for Blood**

**Declaration of Policy**

Sec. 1. The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this State. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills and materials. It is therefore the public policy of this State to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to instances of negligence.

**Limitation of Liability**

Sec. 2. No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing or transferring any tissue, organ, blood or component thereof from one or more human beings, living or dead, to another human being, shall be liable as the result of any such activity, save and except that each such person or entity shall remain liable for his or its own negligence.

**Exception**

Sec. 3. (a) No blood bank may pay cash for blood. No blood bank may pay a seller for blood by check unless the check is sent to the seller by United States mail not before the expiration of 15 days following the day the blood is taken from the seller.

(b) If a blood bank purchases blood in violation of Subsection (a) of this section and the blood contains harmful substances, the blood bank is not entitled to the immunity provided in this Act.

(c) In any suit brought under the exception in Subsection (b) of this section, the burden shall be on the blood bank to show that the blood was not purchased in violation of Subsection (a) of this section.

(d) "Blood bank" means a blood bank licensed by the Division of Biological Standards of the National Institute of Health, or the American Association of Blood Banks.

[Acts 1971, 62nd Leg., p. 1985, ch. 613, eff. June 4, 1971.]

**Legislative Intent**

*The Governor filed the following letter with the Secretary of State along with House Concurrent Resolution No. 195, Acts 1971, 62nd Leg., p. 4122, which corrects Senate Bill No. 534 [Chapter 613 enacting this article]:*

*"Dear Mr. Secretary:*

*"On June 4, 1971, I signed Senate Bill No. 534. At that time, I was unaware that House*

*Concurrent Resolution No. 195 had been passed by the Legislature directing the Senate Enrolling Room to make certain changes in the bill. House Concurrent Resolution No. 195 evidently was misplaced, inasmuch as it was not received by my office until June 10, 1971.*

*"Although I have already signed Senate Bill No. 534 into law, I am filing with my signature H.C.R. No. 195 as evidence of the legislative intent embodied in Senate Bill No. 534.*

*"Sincerely, Preston Smith, Governor of Texas."*

*House Concurrent Resolution No. 195, which was filed with the Secretary of State on June 14, 1971, reads:*

*"WHEREAS, Senate Bill No. 534 has been passed by both houses and is now in the Senate Enrolling Room, and certain corrections need to be made in the bill; now, therefore, be it*

*"RESOLVED by the House of Representatives of the State of Texas, the Senate concurring, That the Enrolling Clerk of the Senate be directed to correct the bill so that all below the enacting clause reads as follows:*

*"Sec. 1. Declaration Policy. The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this state. The imposition of legal liability without fault, or the determination that the furnishing of human tissue, organs, blood and components thereof is a product as opposed to a service, upon persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and imposes too rigid a standard of product liability. It is therefore the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to instances of negligence.*

*"Sec. 2. Limitation of Liability. No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing or transferring any tissue, organ, blood or component thereof from one or more human beings, living or dead, to another human being, shall not be considered for any purposes as having furnished a product thereby, but performing any of the foregoing shall be considered as having provided a service and the concept of product liability shall never be applied thereto.*

*"Sec. 3. Declaring on Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative pub-*



*lic necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."*

**CHAPTER FOURTEEN. GROUP HOSPITAL SERVICE [REPEALED]**

**Art. 4590a. Repealed by Acts 1951, 52nd Leg. p. 868, ch. 491, § 4**

This article, derived from Acts 1939, 46th Leg., p. 123, and Acts 1943, 48th Leg., p. 371, ch. 249, related to non-profit corporations for group hospital service. The subject matter is now covered by Insurance Code, Arts. 20.01 to 20.21.

**CHAPTER FIFTEEN. AMBULANCES**

**Art. 4590b. Regulation of Public and Private Emergency Ambulances; Permits**

*Permit Required*

Sec. 1. No person, firm or corporation shall operate or cause to be operated in the State of Texas, any emergency ambulance, public or private, or any other vehicle commonly used for the transportation or conveyance of the sick or injured, without first securing a permit therefor from the State Board of Health as hereinafter provided.

*Equipment Required*

Sec. 2. Every ambulance, patrol automobile or vehicle hereinafter described, before permit is issued therefor, shall be equipped with and, when in service, carry as minimum equipment the following:

- (a) A first aid kit;
- (b) Traction splints for the proper transportation of fractures of the extremities.

*Persons Trained in First Aid on Ambulances*

Sec. 3. Every such ambulance or vehicle hereinabove described, when in service, shall be accompanied by at least one person who has acquired theoretical or practical knowledge in first aid as prescribed and certified by the American Red Cross, evidenced by a certificate issued to such person by the State Board of Health.

Provided, however, that after the passage of this Act, firms or establishments operating ambulances will be given sixty days in which to furnish such Red Cross First Aid Course as specified herein; and, further, that in the future, new employees employed for the purpose of operating ambulances will be given sixty days in which to complete said first aid course.

*Permits; Sirens and Warning Signals*

Sec. 4. Application for a permit to operate any such ambulance or other vehicle hereinabove described, on the streets of any city or on the highways of this state, shall be made

upon a form prescribed by the State Board of Health. Said application shall be made to any public health officer of any of the political sub-divisions of this state where said applicant's principal place of business is located, and if said public health officer finds that the applicant has complied with the provisions of this Act and the rules and regulations prescribed by the State Board of Health for the purpose of carrying out this Act, it shall be the duty of the State Board of Health to issue a permit to said applicant, which permit shall expire two years from the date of its issuance. Such permit shall be renewed by the State Board of Health upon finding by a health officer of a political sub-division of this state that the holder of said permit is complying with the provisions of this Act and the rules and regulations of the State Board of Health. Provided, however, that all incorporated cities and towns are hereby authorized to regulate the use of sirens, warning signals, warning lights and illuminating and sound devices used on ambulances or other vehicles for the transportation or conveyance of sick or injured.

Each permit shall be numbered and posted at such place in the interior of the ambulance or vehicle as the State Board of Health may prescribe.

Any such permit may be subject to revocation by the State Board of Health upon the finding by a public health officer of any political sub-division of this state that said permittee has failed to comply with the provisions of this Act or the rules and regulations of the State Board of Health; provided, however, that said permittee is given notice and an opportunity to be heard.

*Violations*

Sec. 5. Any person violating any provision of this Act shall, upon conviction thereof, be punished by a fine of not to exceed One Hundred (\$100.00) Dollars.

*Partial Invalidity*

Sec. 6. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

[Acts 1943, 48th Leg., p. 633, ch. 360.]

**CHAPTER SIXTEEN. BASIC SCIENCES**

**Art. 4590c. Basic Science Law**

*Basic Science Certificate Required*

Sec. 1. No person shall be permitted to take an examination for a license to practice the healing art or any branch thereof, or be granted any such license, unless he has presented to the Board or officer empowered to issue such a license as the applicant seeks, a

certificate of proficiency in anatomy, physiology, chemistry, bacteriology, pathology, and hygiene and public health, hereinafter referred to as the basic sciences, issued by the State Board of Examiners in the Basic Sciences.

#### The Healing Art Defined

Sec. 2. For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

#### Board of Examiners

Sec. 3. The Governor, within thirty (30) days after this Act takes effect, shall appoint a State Board of Examiners in the Basic Sciences, hereinafter referred to as the Board, consisting of six (6) members. The said Board shall be appointed subject to the consent and confirmation of the Senate. Of the members first appointed, two (2) shall serve for a term of two (2) years, or until their successors shall be appointed and qualified; two (2) shall serve for a term of four (4) years, or until their successors shall be appointed and qualified; and the remaining two (2) members shall serve for a term of six (6) years, or until their successors shall be appointed and qualified. Thereafter at the expiration of the term of each member of the Board first appointed, his successor shall be appointed by the Governor for, and shall serve for, a term of six (6) years, or until his successor shall be appointed and qualified. On the death, resignation or removal of any member, the Governor shall fill the vacancy by appointment for the unexpired portion of the term. Every member shall serve until his successor is appointed and qualified. The members of the Board shall be selected because of their knowledge of the basic sciences named in this Act, and each member shall be a professor, or an assistant or associate professor or an instructor on the faculty of the University of Texas, the Agricultural and Mechanical College of Texas, the Texas Technological College, Baylor University, Southern Methodist University, Texas Christian University, St. Edwards University, Rice Institute, Southwestern University, or any other institution or college located within the State of Texas of equal academic standing and facilities for instruction. Each member shall have resided in the State of Texas not less than one (1) year next preceding his appointment. No member of the Board shall be actively engaged in the practice of the healing art or any branch thereof, nor possess or have in the past possessed a license to practice the healing art or any branch thereof, nor be employed or having in the past been employed by any medical branch of any school or college.

#### Organization, Officers and Compensation of Board

Sec. 4. The Board shall organize as soon as practicable after its appointment. It shall have authority to elect officers, to adopt a seal, and to make such rules and regulations, not in-

consistent with the law, as it deems expedient to carry this Act into effect. The Board shall keep a record of its proceedings, which shall be prima facie evidence of all matters contained therein. Each member of the Board shall take the constitutional oath of office.

In the discharge of duties devolved by this Act, the Board shall act through the Secretary-Treasurer. The Secretary-Treasurer shall be required to execute a bond in the sum of Ten Thousand Dollars (\$10,000.00) for the faithful performance of his duties, payable to the Texas State Board of Examiners in the Basic Sciences. The premium of such bonds shall be paid out of fees received.

Each member of the Board shall be paid Twenty-five Dollars (\$25.00) per day for each day actively engaged in the discharge of his duties, and the time spent in going to and returning from meetings of the Board shall be included in computing such time.

In addition to this per diem, each member of the Board shall be compensated for actual expenditures made while actually engaged in the performance of the duties of the Board.

#### Executive Secretary

Sec. 4a. The State Board of Examiners in the Basic Sciences shall employ an Executive Secretary who shall not be a member of the Board. The Executive Secretary is entitled to compensation and is entitled to reimbursement for necessary expenses while traveling on official business for the Board, as provided by legislative appropriation. Said Executive Secretary, before entering upon duties of his position, shall give a good and sufficient bond executed by a surety company authorized to do business in the State of Texas, in the sum of Ten Thousand Dollars (\$10,000), payable to the State of Texas, conditioned on the faithful performance of his duties, such bond to be approved by the Attorney General and filed in the office of the Secretary of State. The bond premium shall be paid by the Board as provided by law. The Executive Secretary shall serve at the pleasure of the Board and shall perform duties and responsibilities as may be assigned to him by the Board.

#### Fees Payable by Applicants

Sec. 5. Fees for examination by the Board shall be Twenty-five Dollars (\$25.00). The fee for re-examination within a twelve-month period shall be Fifteen Dollars (\$15.00), but the fee for re-examination after the twelve-month period has expired shall be the same as the original fee. The fee for the issue of a certificate by authority of waiver of examination shall be Fifty Dollars (\$50.00). The fee for the issue of a certificate by the authority of reciprocity, in the qualification as determined by the proper agency of some other state or territory or the District of Columbia, shall be Fifty Dollars (\$50.00). All fees shall be paid to the Board by the applicant when he files his application. The Board shall pay all money received as fees into the State Treasury, where such money will

be placed in a special fund to be known as "The Basic Science Examination Fund." All money so received and placed in such fund shall be held within six (6) months from the Basic Sciences in paying its compensation and defraying its expenses, and in administering, enforcing and carrying out the provisions of the law, subject to the amounts appropriated in the General Appropriation Act. The Board may hire such employees as are necessary in carrying out the provisions of the law as are provided in the General Appropriation Act. The State Treasurer shall pay out of the fund the compensation of and expenses incurred by the Board on warrants based upon vouchers signed by the President and the Secretary of the Board. Such compensation and expenses shall be limited to the amounts as are appropriated in the General Appropriation Act.

#### Examination

Sec. 6. The Board shall conduct examinations at such times and places as it deems best, provided, however, that the first examination shall be held within six (6) months from the effective date of this Act, and one examination shall be held during each period of six (6) months thereafter. Every applicant except as hereinafter provided, shall be examined to determine his knowledge, ability and skill in the basic sciences. The examinations shall be conducted in writing, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of practice. All applicants shall be known to the examiners only by numbers, without names, or other method of identification on examination papers by which members of the Board may be able to identify such applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. If the applicant receives a credit of seventy-five per cent (75%) or more in each of the basic sciences, he shall be considered as having passed the examination. If the applicant receives less than seventy-five per cent (75%) in one subject and receives seventy-five per cent (75%) or more in each of the remaining subjects, he shall be allowed a re-examination at the examination next ensuing, on application and the payment of the prescribed fee, and he shall be required to be re-examined only in the subject in which he received a rating less than seventy-five per cent (75%). If the applicant receives less than seventy-five per cent (75%) in more than one subject, he shall be entitled to take a second examination after a period of six (6) months has elapsed from the date of the first examination, and he shall then be re-examined in all subjects. If the applicant receives less than seventy-five per cent (75%) in more than one subject on such second examination, he shall not be re-examined unless he presents proof, satisfactory to the Board, of additional study in the basic sciences sufficient to justify re-examination, and shall then be re-examined in all subjects. Provided, however, it is the in-

tent of this Act that the examinations given shall be similar to the examinations given in the subjects named in this Act at the colleges or universities named above.

#### Requirements for Certificate; Temporary License

Sec. 7. No certificate shall be issued by the Board unless the person applying for it submits evidence, satisfactory to the Board,

(1) that he is a citizen of the United States;

(2) that he is not less than nineteen (19) years of age;<sup>1</sup>

(3) that he is a person of good moral character;

(4) that he was graduated by a high school accredited by the State Committee on Classified and Accredited Schools, or a school of equal grade, or that he possesses educational qualifications equivalent to those required for graduation by such an accredited high school;

(5) he must have completed sixty (60) semester hours of college courses which would be acceptable at the time of completing same at the University of Texas on a Bachelor of Arts Degree or a Bachelor of Science Degree; and

(6) that he has a comprehensive knowledge of the basic sciences as shown by his passing the examination given by the Board as by this Act required.

This shall not be construed to prevent the issue of certificates under the provisions of Section 8 of this Act. Provided, however, the Secretary may issue a temporary license to practice medicine to an applicant only after he has filed his completed application with the Secretary, and that all of the other requirements as required for a permanent license are complied with, such temporary license shall be valid only until the date of the next Board Meeting, and at that date, the temporary license automatically expires and is of no further effect. If the applicant fails the examination, no further temporary license shall be issued until he has successfully passed the examination, or is eligible for and has been granted reciprocity.

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

#### Reciprocity

Sec. 8. The Board shall waive the examination required by Section 7, when proof satisfactory to the Board is submitted, showing

(1) that the applicant has passed in another State or Territory or the District of Columbia an examination in the basic sciences before a Board of Examiners in the Basic Sciences;

(2) that the requirements of that State or Territory or the District of Columbia are not less than those required by this Act as a condition precedent to the issue of a certificate;

(3) that the Board of Examiners in the Basic Sciences in that State or Territory or the District of Columbia grants like exemption from examination in the basic sciences to persons holding certificates from the State Board of Examiners in the Basic Sciences in Texas;

(4) that the applicant show satisfactory proof that he is a citizen of the United States; and

(5) that the applicant is a person of good moral character and the holder of an uncanceled basic science certificate from another State or Territory or the District of Columbia.

#### Appeal

Sec. 9. Any person aggrieved by any action of the Board may appeal to a district Court of any county in which the aggrieved person resides. Such appeals shall be taken by serving the Secretary of the Board with citation duly issued by the clerk of the district Court, and the same shall be served in the manner provided by law in the service of citations in suits of a civil nature, and at the expiration of twenty (20) days after the service of said citation, the said cause shall thereupon stand for trial. Such notice of appeal, or citation shall state the action from which the appeal is taken, and, if the appeal is from an order of the Board, stating such order or the part thereof from which the appeal is taken, and filing with the district clerk a bond in the sum of Five Hundred Dollars (\$500), conditioned for the payment of all costs of the appeal. All members of the Board who shall incur any expense on account of the trial of any proceeding in district Court incident to appeal from actions of the Board, shall receive the necessary and proper expenses, including traveling expenses incident thereto, same to be paid out of the funds of the Board in the same manner and by the same proceeding as other expenditures are authorized from said fund.

#### Certificates and Licenses Void

Sec. 10. Any basic science certificate or any license to practice the healing art, or any branch thereof, issued contrary to this Act, shall be void. Any license or certificate of authority to practice the healing arts, or any branch thereof, based upon a void basic science certificate shall be void and shall be so adjudged by any District Court in which the trial of a suit to adjudge the same void or cancel or revoke a license to practice the healing arts may be had. The procedure for such revocation or cancellation shall be in accordance with the provisions of the Act under which such license was issued authorizing the cancellation or revocation of licenses for the practice of the healing art generally. Any certificate of proficiency issued by the Board shall become void upon the revocation of the license of the holder thereof to practice the healing art, or any branch thereof.

#### Practice Without Certificate Forbidden

Sec. 11. Any person who practices the healing art, or any branch thereof, without having obtained a valid certificate from the State Board of Examiners in the Basic Sciences, except as otherwise authorized by this Act, shall be fined not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Each day of such violation shall constitute a separate offense.

#### Fraudulent Certificate Forbidden

Sec. 12. Any person who obtains a basic science certificate by fraudulent means, or who forges, counterfeits or fraudulently alters any such certificate, shall be punished by confinement in the penitentiary for not less than two (2) nor more than five (5) years.

#### Bribery Forbidden

Sec. 13. Any person who shall bribe or offer to bribe any member of the Basic Science Board authorized to issue a certificate of proficiency in the basic sciences, for the purpose of obtaining a certificate of proficiency in the basic sciences, shall be confined in the penitentiary not less than two (2) nor more than five (5) years.

#### Fraudulent Licenses Forbidden

Sec. 14. Any person who knowingly obtains for himself a license to practice the healing art, or any branch thereof, or who aids, advises or assists another in so doing without first obtaining a certificate of proficiency from the Basic Science Board created hereby, or any person who shall present to a licensing board authorized to grant licenses to practice the healing art, or any branch thereof, a certificate obtained from the State Board of Examiners in the Basic Sciences by dishonesty or fraud or by any forged or counterfeit certificate of proficiency, or who knowingly aids, advises or assists another in so doing, shall be guilty of a felony, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Two Thousand Dollars (\$2,000), or imprisonment in the penitentiary for not less than two (2) nor more than five (5) years, or by both such fine and imprisonment.

#### Enforcement

Sec. 15. It shall be the duty of every District Judge in this State, who is required by law to impanel grand juries, to explain to each grand jury the provisions of this Act, and to direct the said grand jury to inquire as to whether or not any provisions of this Act have been violated, and if sufficient evidence has been discovered, to return true bills of indictment.

In the enforcement of this law, the Board shall be represented by the Attorney General and by the County and District Attorneys of this State. The Board, any committee or any member thereof, shall have the power to issue

subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law.

#### Exceptions

Sec. 16. The provisions of this Act do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry, or those persons under the jurisdiction of the Texas State Board of Dental Examiners; nor to duly licensed optometrists who confine their practice strictly to optometry as defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropractors, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract Surgeons of the United States Army, Navy or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor legally qualified physicians of other States called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining or treating patients. The Basic Science Law shall not affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, provided however, that the provisions of this Act shall not apply to a member of any religious faith in administering the last rites of his faith and provided further that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining office, except for the purpose of exercising the principles, tenets or teachings of the church of which they are bona fide members; nor shall the Basic Science Law apply to persons licensed to practice the healing art, or any branch thereof, in the State of Texas when this Act shall take full force and effect; nor shall the Basic Science Law apply to any Chiropractor who is a graduate of a school which was regularly organized and conducted as a chiropractic school in the United States at the time of such graduation and who has practiced Chiropractic one (1) year immediately preceding the effective date of this Act and who has resided in Texas for two (2) years immediately preceding the effective date of this Act and who has never had a license to practice any branch of the healing art cancelled by any American or Canadian State, Province or Territory, provided, however, that licenses voided by virtue of the decision in *Ex Parte Halsted*, 182 S.W. (2d) 479, shall not be construed as licenses cancelled as provided by this Section.

#### Certificates Issued to Persons Having College or University Credits

Sec. 16-a. The Board shall issue a certificate of proficiency to any person who is otherwise qualified by law and who shall present to the Board, a transcript of credits certifying that such person has satisfactorily completed sixty (60) or more semester hours of college credits at a college or university which issues credits acceptable by The University of Texas leading toward a Bachelor of Arts or a Bachelor of Science Degree; said college or university credits shall include the satisfactory completion of all of the subjects enumerated in Section 1 of this Act with an average of seventy-five per cent (75%) or better in each of such courses; and The University of Texas shall offer at the Main University, at Austin, Texas, beginning with the fall semester 1949, courses in each of the above-enumerated subjects.

#### Healing Art Defined

Sec. 17. The healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

#### Exceptions

Sec. 18. The provisions of the Basic Science Law do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry, or those persons under the jurisdiction of the Texas State Board of Dental Examiners; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropractors, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract Surgeons of the United States Army, Navy or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other States called in consultation, but who have no office in Texas and appoint no place in this State for seeing, examining or treating patients. The Basic Science Law shall not affect or limit in any way the application or uses of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; provided however, that the provisions of this Act shall not apply to a member of any religious faith in administering the last rites of his faith; and provided further that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide

members, nor shall the Basic Science Law apply to persons licensed to practice the healing art, or any branch thereof in the State of Texas when this Act shall take full force and effect; nor shall the Basic Science Law apply to any Chiropractor who is a graduate of a school which was regularly organized and conducted as a chiropractic school in the United States at the time of such graduation and who has practiced Chiropractic one (1) year immediately preceding the effective date of this Act and who has resided in Texas for two (2) years immediately preceding the effective date of this Act and who has never had a license to practice any branch of the healing art cancelled by any American or Canadian State, Province, or Territory, provided however, that licenses voided by virtue of the decision in *Ex Parte: Halsted*, 182 S.W. (2nd) 479, shall not be construed as licenses cancelled as provided by this Section.

#### Unlawful Practice; Penalty

Sec. 19. Any person who practices the healing art, or any branch thereof, without having obtained a valid certificate from the State Board of Examiners in the Basic Sciences, except as otherwise authorized by this Act, shall be fined not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Each day of such violation shall constitute a separate offense.

#### Obtaining Certificate by Fraud, Forgery or Counterfeit; Penalty

Sec. 20. Any person who obtains a basic science certificate by fraudulent means, or who forges, counterfeits or fraudulently alters any such certificate, shall be punished by confinement in the penitentiary not less than two (2) nor more than five (5) years.

#### Failure to Obtain or False Certificate; Penalty

Sec. 21. Any person who knowingly obtains for himself a license to practice the healing art, or any branch thereof, or who aids, advises or assists another in so doing without first obtaining a certificate of proficiency from the Basic Science Board, or any person who shall present to a licensing board authorized to grant licenses to practice the healing art, or any branch thereof, a certificate obtained from the State Board of Examiners in the Basic Sciences by dishonesty or fraud or by any forged or counterfeit certificate of proficiency, or who knowingly aids, advises or assists another in so doing, shall be guilty of a felony and upon conviction shall be punished by fine of not less than One Hundred Dollars (\$100) nor more than Two Thousand Dollars (\$2,000), or imprisonment in the penitentiary for not less than two (2) nor more than five (5) years, or by both such fine and imprisonment.

Secs. 22, 23. [Classified as Penal Code (1925), arts. 160-a, 160-b and repealed by Acts

1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974]

#### Graduates Enrolled Before Act Became Law

Sec. 23a. The provisions of this Act shall not apply to graduates of schools of the healing arts who have been enrolled in their respective schools for at least one (1) year prior to the time this Act becomes law and who have attended said schools under the G. I. Bill of Rights and were bona fide residents of the State of Texas at the time they entered the military service, provided further that this Section shall not apply to any person who entered the military service after January 1, 1946.

#### Saving Clause

Sec. 24. In the event any section or part of section or provision of this Act be held invalid, unconstitutional, or inoperative this shall not affect the validity of the remaining sections, or parts of sections of the Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional, or inoperative section, or any part of section or provision, had not been included. In the event any penalty, right, or remedy created or given in any section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given by either the whole Act, or in the section thereof containing such invalid, unconstitutional, or inoperative part; and if any exception to, or any limitation upon, any general provision herein contained shall be held to be unconstitutional or invalid, the general provision shall, nevertheless, stand effective and valid, as if the same had been enacted without such limitation or exceptions.

#### Present Licensure Acts Not Repealed

Sec. 25. No provisions of this Act shall be construed as repealing any statutory provision in force at the time of its passage with reference to the requirements governing the issuance of licenses to practice the healing art, or any branch thereof, or as in any way lessening such requirements.

[Acts 1949, 51st Leg., p. 170, ch. 95; Acts 1949, 51st Leg., p. 522, ch. 287, §§ 1, 2; Acts 1951, 52nd Leg., p. 755, ch. 411, § 1; Acts 1955, 54th Leg., p. 759, ch. 277, §§ 1 to 3; Acts 1959, 56th Leg., p. 631, ch. 285, § 1; Acts 1959, 56th Leg., p. 632, ch. 286, § 1; Acts 1967, 60th Leg., p. 1834, ch. 711, § 1, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974.]

### CHAPTER SEVENTEEN. NATUROPATHY [REPEALED]

Art. 4590d. Repealed by Acts 1961, 57th Leg., p. 263, ch. 138, § 1, eff. Aug. 28, 1961

Acts 1961, 57th Leg., p. 263, ch. 138, § 2 provided:

"Sec. 2. The Naturopathic Reregistration Fund (No. 210) is hereby abolished and the balance in that Fund on the effective date of this Act shall be transferred to the General Revenue Fund within thirty (30) days of the effective date of this Act."

**CHAPTER EIGHTEEN. IDENTIFICATION  
OF SYSTEM OF HEALING**

**Art. 4590e. Healing Art Identification Act**

**Title**

Sec. 1. This Act shall be known as the Healing Art Identification Act. The provisions of this Act shall not affect or limit in any way the application or use of the principles, tenets, or teachings of any established church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided, further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members.

**The Healing Art Defined**

Sec. 2. For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

**Healing Art Identifications**

Sec. 3. Every person licensed to practice the healing art heretofore or hereafter by either the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the Texas Board of Chiropractic Examiners, the Texas State Board of Examiners in Optometry, the State Board of Chiropody Examiners and the State Board of Naturopathic Examiners shall in the professional use of his name on any sign, pamphlet, stationery, letterhead, signature, or on any other such means of professional identification, written or printed, designate in the manner set forth in this Act the system of the healing art which he is by his license permitted to practice. The following are the legally required identifications, one of which must be used by practitioners of the healing art:

(1) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Medicine: physician and/or surgeon, M. D.; doctor, M. D.; doctor of medicine, M. D.

(2) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Osteopathy: physician and/or surgeon, D. O.; Osteopathic physician and/or surgeon; doctor, D. O.; doctor of osteopathy; osteopath; D. O.

(3) If licensed by the State Board of Dental Examiners: dentist; doctor, D. D. S.; doctor of dental surgery; D. D. S.; doctor of dental medicine, D. M. D.

(4) If licensed by the Texas Board of Chiropractic Examiners: chiropractor;

doctor, D. C.; doctor of Chiropractic; D. C.

(5) If licensed by the Texas State Board of Examiners in Optometry: optometrist; doctor, optometrist; doctor of optometry; O. D.

(6) If a practitioner of the healing art is licensed by the State Board of Podiatry Examiners, he shall use one of the following identifications: chiropodist; doctor, D. S. C.; Doctor of Surgical Chiropody; D. S. C.; podiatrist; doctor, D. P. M.; Doctor of Podiatric Medicine; D. P. M.

(7) If licensed by the State Board of Naturopathic Examiners: naturopathic physician; physician, N. D.; doctor of naturopathy; N. D.; doctor, N. D.

**Other Persons Using Title "Doctor"**

Sec. 4. Any person not otherwise covered by the provisions of this Act, and not given herein a means of identification shall, in using the title "doctor" as a trade or professional asset, or on any sign, pamphlet, stationery, letterhead, signature, or any other manner of professional identification, designate under what authority such title is used, or what college or honorary degree gave rise to its use, in the same manner as practitioners of the healing arts are required under this Act to identify themselves.

**Enforcement**

Sec. 5. It shall be the duty and obligation of the several district and county attorneys, upon the request of any of the healing art licensing boards named in Section Three to file and prosecute appropriate judicial proceedings in the name of the State of Texas in the district Court of the county in which a violation occurs against any licensed practitioner of the healing art who fails to comply with the identification requirements of Section Three.

**Penalties**

Sec. 6. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

(1) for the first violation, a fine of One Hundred Dollars (\$100).

(2) for the second violation, a fine of Five Hundred Dollars (\$500).

(3) upon conviction for the third violation of this Act, a fine of One Thousand Dollars (\$1,000), or the license of the violator to practice the healing art shall be revoked. The district Court in which the conviction occurs shall so notify the licensing board which issued the license.

**Repealer**

Sec. 7. All laws or parts of laws in conflict herewith are hereby repealed.

**Partial Unconstitutionality**

Sec. 8. If any Article, section, subsection, sentence, clause or phrase of this Act is, for

any reason, held to be unconstitutional, such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof are declared unconstitutional.

[Acts 1951, 52nd Leg., p. 265, ch. 154; Acts 1963, 58th Leg., p. 39, ch. 26, § 1; Acts 1965, 59th Leg., p. 963, ch. 476, § 1, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 68, ch. 26, § 1, eff. Sept. 1, 1969.]

Section 2 of Acts 1963, 58th Leg., p. 39, ch. 26, provided: "Nothing in this Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropractic Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

Acts 1965, 59th Leg., p. 983, ch. 476, § 1 amended paragraph (6) of section 3 of this article; section 2 of the amendatory act of 1965 provided: "Nothing in this Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropractic Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

Section 2 of the amendatory act of 1969 provided: "Nothing in this Act in any way invalidates or affects or shall be construed to invalidate or affect any valid license duly issued by the State Board of Podiatry Examiners (formerly known as the State Board of Chiropractic Examiners) and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by that Board."

## CHAPTER NINETEEN. NUCLEAR AND RADIOACTIVE MATERIALS

### Article

4590f. Nuclear and Radioactive Materials; Sources of Radiation; Licensing and Registration.  
4590g. Repealed.

### Art. 4590f. Nuclear and Radioactive Materials; Sources of Radiation; Licensing and Registration

#### Declaration of Policy

Sec. 1. It is the policy of the State of Texas in furtherance of its responsibility to protect the public health and safety:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for (a) compatibility with the standards and regulatory programs of the Federal Government, (b) a single, effective system of regulation within the state, and (c) a system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public.

#### Purpose

Sec. 2. It is the purpose of this Act to effectuate the policies set forth in Section 1 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the Federal Government and the state and facilitate inter-governmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public.

#### Definitions

Sec. 3. (a) By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) Radiation means one or more of the following:

(1) Gamma and x-rays; alpha and beta particles and other atomic or nuclear particles or rays; or

(2) Any electronic devices capable of stimulated emission of radiation to such energy density levels as to reasonably cause bodily harm.

(3) Any device capable of producing sonic, ultrasonic or infrasonic waves in the energy range to reasonably cause detectable bodily harm as a result of the operation of an electronic circuit in such device.

(c) License—General and Specific.

(1) General license means a license effective pursuant to regulations promulgated by the Texas State Radiation Control Agency without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-products, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(2) Specific license means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(d) Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than Federal



Government Agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(e) Source materials means

(1) uranium, thorium, or any other material which the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such; or

(2) ores containing one or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material.

(f) Special nuclear material means

(1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, as determined the material to be such, but does not include source material; or

(2) any material artificially enriched by any of the foregoing, but does not include source material.

(g) Registration means notification of the Agency within thirty (30) days following the commencement of an activity involving the operation of radiation producing equipment or the manufacturer, use, handling or storage of radioactive material. Said notice shall state the location, nature, and scope of such operation, manufacture, use, handling or storage.

(h) Excessive exposure means the exposure to radiation in excess of the maximum permissible levels as provided under rules or regulations adopted by the Texas State Board of Health.

(i) Radioactive material means any material, solid, liquid or gas, which emits radiation spontaneously, whether occurring naturally or produced artificially.

(j) Source of radiation means any radioactive material, or any device or equipment emitting or capable of producing radiation, whether intentional or incidental.

(k) Electronic product means any manufactured produce or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.

State Radiation Control Agency

Sec. 4. (a) The Texas State Department of Health is hereby designated as the State Radiation Control Agency, hereinafter referred to as the Agency.

(b) The Commissioner of the Texas State Department of Health shall designate an individual to be Director of the Radiation Control

Program, hereinafter referred to as the Director, who shall perform the functions vested in the Agency pursuant to the provisions of this Act.

(c) In accordance with the laws of the State of Texas, the Agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this Act.

(d) The Agency shall for the protection of the occupational and public health and safety:

(1) Develop programs for evaluation of hazards associated with use of sources of radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of sources of radiation;

(3) Formulate, adopt, promulgate and repeal codes, rules and regulations, which may provide for licensing and registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government. Rules and regulations shall not become effective until ninety (90) days after adoption by the State Radiation Control Agency;

(4) Issue such orders of modifications thereof as may be necessary in connection with proceedings under Section 6 of this Act;

(5) Advise, consult, and cooperate with other agencies of the state, the Federal Government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation; and

(8) Collect and disseminate information relating to control of sources of radiation, including:

a. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

b. Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this Act and any administrative or judicial action pertaining thereto; and

c. Maintenance of a file of all rules and regulations relating to regulation of sources of radiation, pending

or promulgated, and proceedings thereon.

#### Radiation Advisory Board

Sec. 5. (a) There is hereby established a Radiation Advisory Board consisting of nine (9) members. The Governor shall appoint to the Board individuals as follows: one (1) from industry, who shall be trained in the field of nuclear physics, science and/or nuclear engineering, one (1) from labor, one (1) from agriculture, one (1) from insurance, one (1) from public safety, one (1) hospital administrator, and three (3) persons licensed by the Texas State Board of Medical Examiners, specializing in: one (1) from nuclear medicine or physics, one (1) from pathology, and one (1) from radiology. Of the nine (9) members of the Board first appointed under the provisions of this Act, three (3) shall serve for a period of six (6) years; three (3) shall serve for a period of four (4) years; three (3) for a period of two (2) years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. After the expiration of the terms of the first appointees to the Board, the terms of all members shall be for six (6) years. Provided, members of the Board shall receive no salary for services but may be reimbursed for actual expenses incurred in connection with attendance at Board meetings or for authorized business of the Board.

(b) The Advisory Board shall:

(1) Review and evaluate policies and programs of the state relating to radiation.

(2) Make recommendations to the Texas State Radiation Control Agency and furnish such technical advice as may be required on matters relating to development, utilization and regulation of sources of radiation.

(3) Review proposed rules and regulations of the State Radiation Control Agency relating to use and control of sources of radiation to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state and report its findings to the State Radiation Control Agency.

(4) A majority of the Board shall constitute a quorum for the transaction of business. The Board shall elect from its membership a Chairman, Vice-Chairman, and Secretary. A record of all meetings shall be kept and the Board shall meet at Austin, quarterly, on a date to be fixed by the Board, and shall hold such special meetings as may be called by the Commissioner of Health or any three (3) members of the Board. Such special meetings may be held at any designated place within the State of Texas as determined by the Commissioner of Health to best serve the purpose for which the special meeting is called. Timely notice of such special meetings shall be given to each member.

4 West's Tex. Stats. & Codes—47

#### Licensing and Registration of Sources of Radiation

Sec. 6. (a) The Texas State Radiation Control Agency shall provide by rule or regulation for general or specific licensing of radioactive materials, or devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension or revocation of licenses. Such rules or regulations shall provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the Agency by rule or regulation may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the Agencies or Agency may deem reasonable and necessary to protect the occupational and public health and safety. The Agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the Agency may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The Agency may require any applications or statements to be made under oath or affirmation;

(2) Each license shall be in such form and contain such terms and conditions as the Agency may by rule or regulation prescribe;

(3) No license issued under the authority of this Act and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this Act.

(b) The Texas State Radiation Control Agency is authorized to require registration or licensing of other sources of radiation.

(c) The Texas State Radiation Control Agency is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Section when the Agency makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Rules and regulations promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the Texas State Radiation Control Agency shall deem desirable subject to such registration requirements as the Agency may prescribe.

#### Inspection

Sec. 7. The Texas State Radiation Control Agency or their duly authorized representa-

tives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violations of the provisions of this Act and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the Federal Government shall be effected only with the concurrence of the Federal Government or its duly designated representative.

#### Records

Sec. 8. (a) The Texas State Radiation Control Agency shall require each person who possesses or uses a source of radiation to maintain records relating to its utilization, receipt, storage, transfer or disposal and such other records as the Agency may require subject to such exemptions as may be provided by rules or regulations.

(b) The Texas State Radiation Control Agency shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the Agency. Copies of these records and those required to be kept by Subsection (a) of this Section shall be submitted to the Agency on request. Any person possessing or using a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record at any time such employee has received excessive exposure and upon termination of employment. A copy of his annual exposure record shall be furnished to the employee upon his request.

#### Federal-State Agreements

Sec. 9. (a) The Governor, on behalf of this state, is authorized to enter into agreements with the Federal Government providing for discontinuance of certain of the Federal Government's responsibilities with respect to sources of radiation and the assumption thereby by this state.

(b) Any person who, on the effective date of an agreement under Subsection (a) above, possesses a license issued by the Federal Government, shall be deemed to possess the same pursuant to a license issued under this Act, which shall expire either ninety (90) days after receipt from the Texas State Radiation Control Agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

#### Inspection Agreements and Training Programs

Sec. 10. (a) The Texas State Radiation Control Agency is authorized to enter into, subject to the approval of the Governor, an agreement or agreements with the Federal Government, other states or interstate agencies, whereby this state will perform on a cooperative basis with the Federal Government, other states or interstate agencies, inspections or other func-

tions relating to control of sources of radiation.

(b) The Texas State Radiation Control Agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Act, and may make said personnel available for participation in any program or programs of the Federal Government, other states or interstate agencies in furtherance of the purposes of this Act.

#### Conflicting Laws

Sec. 11. Regulations, ordinances, or resolutions, now or hereafter in effect, of other State Agencies, the governing body of a municipality or county or board of health relating to sources of radiation shall not be superseded by this Act; provided, that such regulations, resolutions, or ordinances are and continue to be consistent with the rules and regulations promulgated by the Texas Radiation Control Agency under the provisions of this Act.

#### Administrative Procedure and Judicial Review

Sec. 12. (a) In any proceeding under this Act:

(1) For the issuance or modifications of rules and regulations relating to control of sources of radiation; or

(2) For granting, suspending, revoking, or amending any license or registration; or

(3) For determining compliance with or granting exceptions from rules and regulations of the Texas State Radiation Control Agency, the Agency shall afford an opportunity for a hearing before the Radiation Advisory Board on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as party to such proceeding. Upon the conclusion of such hearing, the findings and recommendations of the Radiation Advisory Board shall be reported to the Texas Radiation Control Agency.

(b) Whenever the Texas State Radiation Control Agency finds that an emergency exists requiring immediate action to protect the public health and safety, the Agency may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this Act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the Agency shall be afforded a hearing within ten (10) days. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within thirty (30) days after such hearing.

(c) Any final order entered in any proceeding under Subsections (a) and (b) above shall be subject to judicial review by any District

Court of Travis County, Texas, in the manner prescribed.

#### Injunction Proceedings

Sec. 13. Whenever, in the judgment of the Texas State Radiation Control Agency, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any rule, regulation or order issued thereunder, and at the request of the Agency, the Attorney General may make application to any District Court in Travis County for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Agency that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

#### Prohibited Uses

Sec. 14. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any source of radiation unless licensed, registered, or exempted by the Texas State Radiation Control Agency in accordance with the provisions of this Act.

#### Impounding of Sources of Radiation

Sec. 15. The Texas State Radiation Control Agency shall have the authority in the event of any emergency to impound or order the im-

pounding of sources of radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this Act or any rules or regulations issued thereunder.

#### Penalties

Sec. 16. Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), and for the second or subsequent offense shall be subject to a fine of not less than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for a period of not more than one (1) year or both such fines and imprisonment.

[Acts 1961, 57th Leg., p. 138, ch. 72, eff. April 17, 1961; Acts 1971, 62nd Leg., p. 2612, ch. 858, § 1, eff. June 9, 1971.]

Sections 2 and 3 of the 1971 amendatory act provided:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 4590g. Repealed by Acts 1971, 62nd Leg., p. 3323, ch. 1024, art. 1, § 3, eff. Sept. 1, 1971**

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

# TITLE 72

## HOLIDAYS—LEGAL

### Article

- 4591. Enumeration.
- 4591a. Texas Pioneers' Day.
- 4591b. Stephen F. Austin Day; Designation and Commemoration.
- 4591c. General Pulaski Memorial Day.
- 4591d. Transferred to Art. 342-910a.
- 4591e. Veterans Day; Designation Changed from Armistice Day.

### Art. 4591. Enumeration

The first day of January, the 19th day of January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the fourth day of July, the 27th day of August, the first Monday in September, the second Monday in October, the fourth Monday in October, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 9, ch. 8, § 1; Acts 1951, 52nd Leg., p. 280, ch. 163, § 1; Acts 1957, 55th Leg., p. 428, ch. 205, § 1; Acts 1967, 60th Leg., p. 948, ch. 416, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 600, ch. 205, § 1, eff. Jan. 1, 1971; Acts 1973, 63rd Leg., p. 517, ch. 221, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 amendatory act provided: "This Act takes effect August 27, 1973."

### Art. 4591a. Texas Pioneers' Day

The 12th of August of each year hereafter shall be designated and observed as Texas Pioneers' Day, and the Governor of Texas shall issue a proclamation at least thirty days in advance of such date each year, in which he shall call upon the people of the State of Texas to assemble in mass-meetings preferably to be held in the open air and in the form of Pioneers' Picnics and Old Settlers' Reunions and similar celebrations, to do honor to the memory of the heroic pioneers who by their sacrifices and hardships converted the primeval wilderness into the great empire of peace and plenty which we today enjoy;

The purpose of these celebrations shall be patriotic and educational, to preserve the traditions and memories of pioneer days, and in no-

wise of a political, sectarian or partisan nature;

The State association of Texas Pioneers is hereby requested to assume the initiative in the organization of Pioneer Day celebrations each year and to prepare and circulate suitable programs for the observance of the same.

Nothing in this resolution shall be construed to make Texas Pioneers' Day a legal holiday. [Acts 1925 39th Leg., p. 689, H.C.R. No. 12.]

### Art. 4591b. Stephen F. Austin Day; Designation and Commemoration

That the Third day of November of each year is hereby designated and fixed, and is to be hereafter known as, "Father of Texas Day" in memory of Stephen F. Austin, the real and true Father of Texas, and that said day and date be regularly observed by appropriate and patriotic programs, being given in the Public Schools and other places that will properly commemorate the birthday of that great pioneer patriot, Stephen F. Austin, and thereby inspire a greater love for our beloved Lone Star State; provided, however, that said day shall not be a legal holiday.

[Acts 1933, 43rd Leg., p. 68, ch. 37.]

### Art. 4591c. General Pulaski Memorial Day

Therefore be it Resolved, by the Legislature of the State of Texas, that the Governor of the State of Texas is authorized and directed to issue a proclamation calling upon officials of the Government to display the flag of the United States on all governmental buildings on October 11th of each year and inviting the people of the State of Texas to observe the day in schools and churches, or other suitable places, with appropriate ceremonies in commemoration of the death of General Casimir Pulaski.

[Acts 1931, 42nd Leg., p. 899, S.C.R. #12.]

### Art. 4591d. Transferred to Art. 342-910a

Acts 1967, 60th Leg., p. 1853, ch. 722, § 7 provided: "Acts 1955, 54th Legislature, Chapter 16, page 16, as amended, codified as Article 4591d, Vernon's Texas Civil Statutes, is in its entirety and as amended by this Act, hereby transferred to and made a part of Chapter IX of the Texas Banking Code of 1943 and designated as Article 10a of said Chapter IX."

### Art. 4591e. Veterans Day; Designation Changed from Armistice Day

The holiday of November 11th, heretofore known as Armistice Day, is hereby designated and is to be hereafter known as Veterans Day, dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and other Americans have fought.

[Acts 1955, 54th Leg., p. 37, ch. 27, § 1.]

## TITLE 73

### HOTELS AND BOARDING HOUSES

#### Article

- 4592. Liability for Valuables.
- 4593. Gratuitous Bailee.
- 4594. Lien.
- 4595. Sale to Satisfy Lien.
- 4596. Definition.
- 4596a. Repealed.
- 4596b. Posting Price in Hotel Rooms.
- 4596c. Furnishing Rate Ticket.

#### Art. 4592. Liability for Valuables

Any hotel, apartment hotel or boarding house keeper, who constantly has in his hotel, apartment hotel or boarding house a metal safe or vault in good order and fit for the custody of money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, or documents of any kind, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts and proper fastening on the transom and window of said room, shall not be liable for the loss or injury suffered by any guest on account of the loss of said valuables in excess of the sum of fifty dollars, which could reasonably be kept in the safe or vault of the hotel, unless said guest has offered to deliver such valuables to said hotel, apartment hotel or boarding house keeper for custody in such metal safe or vault, and said hotel, apartment hotel or boarding hotel or boarding house keeper has omitted or refused to deposit said valuables in such safe or vault and issue a receipt therefor; provided, such loss or injury does not occur through the negligence or wrong doing of said hotel, apartment hotel or boarding house keeper, his servants, or employés, and that a printed copy of this law is posted on the door of the sleeping room of such guest.

[Acts 1925, S.B. 84.]

#### Art. 4593. Gratuitous Bailee

Whenever any person shall allow his baggage or other property to remain in any hotel, apartment hotel or boarding house after the relation of innkeeper and guest has ceased without checking same, or shall leave his baggage or other property in the lobby of any hotel, apartment hotel or boarding house prior to checking it or becoming a guest, or shall forward any baggage to such hotel, apartment hotel or boarding house before becoming a guest, said hotel, apartment hotel or boarding house keeper may, at his option, hold such baggage or other property at the risk of said owner. If any person should check his baggage or other property at any hotel, apartment hotel or boarding house and leave it there free of charge for a period of one week without being a guest, said hotel, apartment hotel or boarding

house keeper may, after the expiration of such time and in the absence of any special agreement, hold such baggage or other property at the risk of the owner.

[Acts 1925, S.B. 84.]

#### Art. 4594. Lien

Proprietors of hotels, boarding houses, rooming houses, inns, tourist courts, and motels shall have a lien on the baggage and other property of guests in such hotels, boarding houses, rooming houses, inns, tourist courts, and motels for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the possession of such proprietor.

[Acts 1925, S.B. 84; Acts 1955, 54th Leg., p. 879, ch. 333, § 1.]

#### Art. 4595. Sale to Satisfy Lien

The keeper of the inn, boarding house, or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty (30) days, at the expiration of which time if such lien is not satisfied, he may sell such baggage or other property at public auction, first giving ten days' notice of the time and place of sale by posting at least three (3) notices thereof in public places in the county where the inn, hotel, or boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty (60) days be paid such guest or boarder. If not demanded within sixty (60) days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn, or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the County Treasurer and if not claimed within one year by the owner thereof, such Treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 383, § 1.]

#### Art. 4596. Definition

As used herein, a hotel or inn includes rooming houses, and is a place where the business is to furnish food and lodging or either, to all who apply and pay therefor.

[Acts 1925, S.B. 84.]

**Art. 4596a.** Repealed by Acts 1969, 61st Leg., p. 1374, ch. 416, § 9, eff. Sept. 1, 1969  
See, now, article 4419e.

**Art. 4596b. Posting Price in Hotel Rooms**

The owner or keeper of each hotel within this State shall post in a conspicuous place in each room thereof a card or sign, stating the price per day of each room and bearing date when posted; and no advance in the price list so posted shall be made within thirty days from the time said card or sign was last posted.

Any hotel owner or keeper who shall fail or refuse to post the rates of his rooms as above required, or any hotel owner, keeper or employé who shall knowingly charge any guest a rate in excess of the rate posted shall be fined

not less than twenty-five nor more than one hundred dollars, or be imprisoned in jail not exceeding thirty days or both, and each day that such excessive rate is charged is a separate offense.

[1925 P.C.]

**Art. 4596c. Furnishing Rate Ticket**

When a room is assigned to a guest by any hotel having twenty rooms or more, such hotel shall give said guest a ticket showing the rate per day he is being charged for such room, which shall conform with the rates posted, and any owner, keeper or employé of said hotel who shall neglect to furnish said guest with such ticket shall be fined not exceeding one hundred dollars.

[1925 P.C.]

**TITLE 74**

**HUMANE SOCIETY [Repealed]**

**Arts. 4597 to 4601.** Repealed by Acts 1953, 53rd Leg., p. 748, ch. 294, § 1

These articles, derived from Vernon's Civ. St. 1914, Acts 1913, 33rd Leg. ch. 56, p. 108 § 6, art. 761f, related to a State Bureau of Child and Animal Protection. For cruelty to animals, see arts. 180 to 189 and Penal Code, § 42.11.

# TITLE 75

## HUSBAND AND WIFE

Chapter	Article
1. Celebration of Marriage [Repealed] -----	4602
2. Matrimonial Property Agreements [Repealed] -----	4610
3. Rights of Spouses [Repealed] -----	4613
4. Divorce -----	4628

### CHAPTER ONE. CELEBRATION OF MARRIAGE [REPEALED]

*Acts 1969, 61st Leg., p. 2707, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

#### DISPOSITION TABLE

Showing where subject matter of repealed articles included within Chapter One is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4602 -----	1.83
4603 -----	1.51(a)
4604 -----	1.01
4604c -----	1.21
4604d, § 1 -----	1.31
	1.32
	1.33
§ 2 -----	1.26
	1.27
§ 3 -----	1.23
§ 4 -----	1.24
	1.25
	1.29
	1.30
§ 5 -----	1.34
§ 6 -----	1.26
	1.28
§ 7 -----	1.07(a)
§ 8 -----	1.22
§ 9 -----	1.35
§ 10 -----	1.32
§ 13 -----	1.36
	1.37
4605 -----	1.02
subsec. (a) -----	1.51(b)
	1.52
subsec. (b) -----	1.03
	1.04
subsec. (c) -----	1.05
subsec. (d) -----	1.03
4606 -----	1.08
	1.84(a)
4607 -----	---
4608 -----	---
4609 -----	---

Arts. 4602 to 4604. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Arts. 4604a, 4604b. Repealed by Acts 1933, 43rd Leg., p. 284, ch. 113, § 2

Arts. 4604c, 4604d. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Arts. 4605 to 4609. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

### CHAPTER TWO. MATRIMONIAL PROPERTY AGREEMENTS [REPEALED]

*Chapter 2, Title 75, Revised Civil Statutes of Texas, 1925, Marriage Contracts, consisting of articles 4610 to 4612, was revised and amended by Acts 1967, 60th Leg., p. 735, ch. 309, § 1.*

*Chapter 2, Matrimonial Property Agreements, as herein set out, consisting of article 4610, was enacted by Acts 1967, 60th Leg., p. 735, ch. 309, § 1, effective January 1, 1968.*

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

Art. 4610. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

See, now, Family Code, § 5.41.

Arts. 4611, 4612. Repealed by Acts 1967, 60th Leg., p. 741, ch. 309, § 6, eff. Jan. 1, 1968

### CHAPTER THREE. RIGHTS OF SPOUSES [REPEALED]

*Chapter 3, Title 75, Revised Statutes of Texas, 1925, Rights of Married Women, consisting of articles 4613 to 4627, as amended, was revised and amended by Acts 1967, 60th Leg., p. 735, ch. 309, § 1.*

*Chapter 3, Rights of Spouses, as herein set out, consisting of articles 4613 to 4627, was enacted by Acts 1967, 60th Leg., p. 735, ch. 309, § 1, effective January 1, 1968.*

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*



DISPOSITION TABLES

TABLE 1

Showing where subject matter of repealed articles included within Chapter Three is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4613	5.01(a)(1) 5.01(a)(2) 5.01(b) 5.21 5.61(a)
4614	4.02
4615	5.01(a)(3)
4617	5.25
4618, § 1	5.81
§ 2	5.82 5.83 5.84 5.85
§ 3	5.02
4619	5.02
4620	5.61(b) 5.61(c) 5.61(d) 5.22 5.23
4621	5.22 5.23
4622	5.24(a) 5.24(b)
4624	5.62
4624a	5.42
4625	4.03
4626	4.04
4627	4.01

TABLE 2

Showing where subject matter of prior law included within former Chapter Three, Rights of Married Women, was covered in Chapter Three, Rights of Spouses, as enacted by Act 1967, 60th Leg., p. 735, ch. 309.

Former Articles	1967 Articles
4613	4613
4614	4613
4615	4615
4616 (Rep.)	4613
4617	4618
4618	4618, 4621
4619	4617, 4619, 4621
4620	4620
4621	4620
4622	4622
4623 (Rep. in 1963)	4613, 4614, 4620
4624	4624
4624a	4624a
4625	4625
4626	4625, 4626
4627	4627

Arts. 4613 to 4615. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Art. 4616. Repealed by Acts 1967, 60th Leg., p. 741, ch. 309, § 6, eff. Jan. 1, 1968

Arts. 4617 to 4622. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Art. 4623. Repealed by Acts 1963, 58th Leg., p. 1188, ch. 472, § 4; Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Arts. 4624 to 4627. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

CHAPTER FOUR. DIVORCE

- Article
- 4628 to 4638. Repealed.
  - 4639 to 4639a-1. Repealed.
  - 4639b. Suit Against Parent Failing to Support Child.
  - 4639c. Suits for Custody and Support of Children After Entry of Foreign Divorce Decree.
  - 4640, 4641. Repealed.

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

DISPOSITION TABLE

Showing where subject matter of repealed articles included within Chapter Four is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4628	2.43
4629, subsec. (1)	3.02
subsec. (2)	3.05
subsec. (3)	3.03
subsec. (4)	3.06
subsec. (5)	3.04
subsec. (6)	3.07
4630	3.08
4631	3.21 3.22 3.23
4632	3.53 3.60 3.61 3.64 3.62
4633	3.62
4634	3.57
4635	3.56
4636	3.58
4637	3.59
4638	3.63
4640	3.66
4641	3.65

Arts. 4628 to 4638. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Arts. 4639 to 4639a-1. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing these articles, enacts Title 2 of the Texas Family Code. Prior to repeal, § 1 of article 4639a was amended by Acts 1961, 57th Leg., p. 663, ch. 305, § 1.

Former article 4639a-1, relating to children requiring custodial care, was derived from Acts 1961, 57th Leg., 1st C.S., p. 135, ch. 31, § 1.

See, now, Family Code, § 14.01 et seq.

#### Art. 4639b. Suit Against Parent Failing to Support Child

Sec. 1. While the marriage relation exists, a suit for the support of a child or children may be brought in the district court against any parent who fails to provide for the support and maintenance of his or her child or children under eighteen years of age. Such suit may be brought by the parent with whom the child or children reside or by any person having the legal custody of the child or children. Where the parents are living separate and apart, but the marriage relation continues to exist, one parent likewise is authorized to bring suit against the other to fix the legal custody of their child or children under the age of eighteen years.

Sec. 2. Venue in such a suit for support or custody shall be in the county of the residence of the defendant.

Sec. 3. Upon the filing of such a suit citation shall issue as in other cases. Upon a hearing the court shall enter such order for support and maintenance and custody, or custody only, of such child or children as may seem necessary and proper. Upon change of conditions such order may be changed after application and hearing. A violation of or refusal to obey any order of the court may be punished as for contempt. Money paid under the provisions of this Act shall be paid into the district clerk's office, and disbursed under the order of the court.

Sec. 4. In the event, however, a suit for divorce be filed by one of the parties to an action brought under this Act, either as an independent suit or as a cross-action, and an order or orders be entered in the divorce suit providing for child support and child custody, then the orders entered in the divorce suit shall operate to control the matter of support and cus-

tody of children to the exclusion of the provisions of this Act.

Sec. 5. The provisions of this Act shall be cumulative of any provisions of law for support and custody of children now in effect.

[Acts 1955, 54th Leg., p. 934, ch. 365.]

#### Art. 4639c. Suits for Custody and Support of Children After Entry of Foreign Divorce Decree

Sec. 1. When the marriage relation no longer exists as a result of divorce action in a foreign jurisdiction, in which the court granting the decree was silent as to custody and support of a child or children under eighteen (18) years of age, a suit for the custody and support of such child or children may be brought in the district court against any parent who fails to provide for the support and maintenance of his or her child or children under eighteen (18) years of age. Such suit may be brought by either parent and shall be brought in the county where the said children actually reside.

Sec. 2. Upon the filing of such suit for custody and support under the provision of this Act, citation shall issue as in other cases. Upon a hearing the court shall enter such order for support and maintenance and custody of such child or children as may seem necessary and proper. Upon change of conditions such order may be changed after application and hearing. A violation of or refusal to obey any order of the court may be punished as for contempt. Money paid under the provisions of this Act shall be paid into the district clerk's office, and disbursed under the order of the court.

Sec. 3. The provisions of this Act shall be cumulative of any provisions of law for support and custody of children now in effect.

[Acts 1959, 56th Leg., p. 959, ch. 447.]

Arts. 4640, 4641. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

# TITLE 76

## INJUNCTIONS

### 1. IN GENERAL

#### Article

- 4642. Grounds For.
- 4643. Issuance by Non-resident Judge.
- 4644. Against Well or Mine Operator.
- 4645. Against a Judgment.
- 4646. To Stay Execution.
- 4646a. Prohibiting Injunction Against Closing Streets.
- 4646b. Repealed.
- 4647 to 4655. Repealed.
- 4656. Jurisdiction for Trial.
- 4657 to 4659. Repealed.
- 4660. Damages for Delay.
- 4661. Repealed.
- 4662. Appeals.
- 4663. Principles of Equity Applicable.

### 2. IN PARTICULAR CASES

- 4664. Nuisance.
- 4665. Nuisance; Evidence.
- 4666. Nuisance; Prosecution.
- 4667. Injunctions to Abate Public Nuisances.
- 4668. Repealed.
- 4669. Revenue Laws.
- 4670. Repealed.

### 1. IN GENERAL

#### Art. 4642. Grounds For

Judges of the district and county courts shall, in term time or vacation, hear and determine applications for and may grant writs of injunction returnable to said courts in the following cases:

1. Where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.

2. Where a party does some act respecting the subject of pending litigation or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant when said act would tend to render judgment ineffectual.

3. Where the applicant shows himself entitled thereto under the principles of equity, and the provisions of the statutes of this State relating to the granting of injunctions.

4. Where a cloud would be put on the title of real estate being sold under an execution against a party having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law.

[Acts 1925, S.B. 84.]

#### Art. 4643. Issuance by Non-resident Judge

No district judge shall grant a writ of injunction returnable to any other court than his own except in the following cases:

1. Where the resident judge cannot hear and act upon the application by reason of his absence, sickness, inability, inaccessibility, disqualification or refusal to act, when such facts are fully set out in the application or in an affidavit accompanying same, and if such judge refuses to act, such refusal shall be indorsed by said judge on such writ with his reasons therefor. In such case no district judge shall grant the writ when the application therefor has once been acted upon by another district judge of this State.

2. To stay execution, or to restrain foreclosure, sales under deeds of trust, trespasses, the removal of property, or acts injurious to or impairing riparian or easement rights, when satisfactory proof is made to such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application.

3. When the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to effectuate the purpose of the writ sought. In such case the applicant or his attorney seeking a writ on the ground of such inaccessibility shall attach to his application an affidavit fully stating the facts of such inaccessibility and his efforts made to reach and communicate with said judge, and the result thereof, and unless such efforts appear to have been fair and reasonable the application shall not be heard. Such injunction may be subsequently dissolved upon it being shown that the petitioner did not first make reasonable efforts to procure a hearing upon said application before the resident judge.

[Acts 1925, S.B. 84.]

#### Art. 4644. Against Well or Mine Operator

No injunction or temporary restraining order shall ever be issued prohibiting sub-surface drilling or mining operations on the application of an adjacent land owner claiming injury to his surface or improvements or loss of or injury to the minerals thereunder, unless the party against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for such injury as may result from such drilling or mining

operations; provided, however, that the party against whom such injunction is sought shall enter into a good and sufficient bond in such sum as the judge hearing the application shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations. The court may, when he deems it necessary to protect the interests involved in such litigation, in lieu of such bond, appoint a trustee or receiver with such powers as the court may prescribe, to take charge of and hold the minerals produced from the lands of those complained against or the proceeds thereof subject to the final disposition of such litigation.

[Acts 1925, S.B. 84.]

#### Art. 4645. Against a Judgment

No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against and so much as will cover the costs.

[Acts 1925, S.B. 84.]

#### Art. 4646. To Stay Execution

No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time, or after rendition, of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the State at the time such judgment was rendered and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment.

[Acts 1925, S.B. 84.]

#### Art. 4646a. Prohibiting Injunction Against Closing Streets

Sec. 1. No injunction shall be granted to stay or prevent the vacating, abandonment or closing, by the City Council or governing body of any incorporated city of this State, of any street or alley in any such incorporated city of this State, except at the suit of the owner or lessee of real property actually abutting on that part of such street or alley actually vacated, abandoned or closed, and then only in the event that the damages of said owner or lessee shall not have been released or shall not have been ascertained and paid in a condemnation suit by such city.

Sec. 2. Provided that any person, who under existing laws has the right to enjoin a city from vacating, abandoning or closing any street or alley of such city and whose right to such injunction is denied by this Act, shall

have the right to an action for damages for any injury that he may sustain by reason of the vacating, abandoning or closing of any street or alley by such city.

[Acts 1930, 41st Leg., 5th C.S., p. 257, ch. 84.]

#### Art. 4646b. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967

Article 4646b, derived from Acts 1943, 48th Leg., p. 227, ch. 144, as amended by Acts 1963, 58th Leg., p. 550, ch. 205, § 25, authorized injunction against persons charging or collecting usurious interest on loans. See, now, article 5069-1.01 et seq.

#### Art. 4647 to 4655. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4656. Jurisdiction for Trial

Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the State, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom a writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile.

[Acts 1925, S.B. 84.]

#### Arts. 4657 to 4659. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4660. Damages for Delay

Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction exclusive of costs.

[Acts 1925, S.B. 84.]

#### Art. 4661. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4662. Appeals

Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or over-ruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Civil Appeals by filing the transcript in such case with the clerk of the said appellate court not later than twenty days after the entry of record of such order or judgment. Such appeal shall not have the effect to suspend the order appealed from unless it shall be so ordered by the court or judge who enters the order. Such case may be heard in the Court of Civil Appeals or Supreme Court on the bill and answer and such

affidavits and evidence as may have been admitted by the judge of the court below. If the appellant desires to file a brief in said appellate court he shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. Such case may be advanced in the Court of Civil Appeals or Supreme Court on motion of either party, and shall have priority over other cases pending therein.

[Acts 1925, S.B. 84.]

#### Art. 4663. Principles of Equity Applicable

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

[Acts 1925, S.B. 84.]

### 2. IN PARTICULAR CASES

#### Art. 4664. Nuisance

Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or where intoxicating liquors are furnished to minors or to students of any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, is hereby declared to be a common nuisance. Any person who knowingly maintains such a place is guilty of maintaining a nuisance.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 988, ch. 399, § 2(I). eff. Jan. 1, 1974.]

#### Art. 4665. Nuisance; Evidence

Proof that any of said prohibited acts are frequently committed in any of said places shall be prima facie evidence that the proprietor knowingly permitted the same, and evidence that persons have been convicted of committing any said act in a hotel, boarding house or rooming house, is admissible to show knowledge on the part of the defendants that this law is being violated in the house. The original papers and judgments or certified copies thereof in such cases of convictions may be used in evidence in the suit for injunction and oral evidence is admissible to show that the offense for which said parties were convicted was committed in said house. Evidence of general reputation of said houses shall also be admissible to prove the existence of said nuisance.

[Acts 1925, S.B. 84.]

#### Art. 4666. Nuisance; Prosecution

Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, either of them

shall file suit in the name of this State in the county where the nuisance is alleged to exist against whoever maintains such nuisance to abate and enjoin the same. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendants from maintaining the same, and ordering that said house be closed for one year from the date of said judgment, unless the defendants in said suit, or the owner, tenant or lessee of said property make bond payable to the State at the county seat of the county where such nuisance is alleged to exist, in the penal sum of not less than one thousand nor more than five thousand dollars, with sufficient sureties to be approved by the judge trying the case, conditioned that the acts prohibited in this law shall not be done or permitted to be done in said house. On violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State in the county where such conditions are violated, all such suits to be brought by the district or county attorney of such county.

[Acts 1925, S.B. 84.]

#### Art. 4667. Injunctions to Abate Public Nuisances

(a) The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall constitute a public nuisance and shall be enjoined at the suit of either the State or any citizen thereof:

(1) For gambling, gambling promotion, or communicating gambling information prohibited by law;

(2) For the promotion or aggravated promotion of prostitution, or compelling prostitution;

(3) For the commercial manufacturing, commercial distribution, or commercial exhibition of obscene material;

(4) For the commercial exhibition of live dances or exhibition which depicts real or simulated sexual intercourse or deviate sexual intercourse;

(5) For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by law.

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the pe-

tion; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 664, ch. 331, § 1; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(J), eff. Jan. 1, 1974.]

**Art. 4668. Repealed by Acts 1963, 58th Leg., p. 114, ch. 65, § 3, eff. Aug. 23, 1963**

**Art. 4669. Revenue Laws**

The full right, power and remedy of injunction may be invoked by the State at the instance of the county or district attorney or Attorney General, to prevent, prohibit or restrain the violation of any revenue law of the State.

[Acts 1925, S.B. 84.]

**Art. 4670. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

## TITLE 77

### INJURIES RESULTING IN DEATH

#### Article

- 4671. Cause of Action.
- 4672. Character of Wrongful Act.
- 4673. Exemplary Damages.
- 4674. Crime No Bar.
- 4675. Institution of Suit.
- 4675a. Proof of Remarriage, etc.
- 4676. Executor, etc., Made Party, When.
- 4677. Damages Apportioned.
- 4678. Death in Foreign State.

#### Art. 4671. Cause of Action

No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskilfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness or default of the receiver, trustee or other per-

son in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskilfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof.

[Acts 1925, S.B. 84.]

#### Art. 4672. Character of Wrongful Act

The wrongful act, negligence, carelessness, unskilfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury.

[Acts 1925, S.B. 84.]

#### Art. 4673. Exemplary Damages

When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered.

[Acts 1925, S.B. 84.]

#### Art. 4674. Crime No Bar

The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide.

[Acts 1925, S.B. 84.]

#### Art. 4675. Institution of Suit

Actions for damage arising from death shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children, and parents of the person whose death has been caused or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the ex-

ecutor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prosecute the same. The amount recovered shall not be liable for the debts of the deceased.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 356, ch. 239, § 2.]

**Art. 4675a. Proof of Remarriage, etc.**

In an action under this title, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if such is true, but the defense is prohibited from directly or indirectly mentioning or alluding to any common-law marriage, extramarital relationship, or marital prospects of the surviving spouse.

[Acts 1973, 63rd Leg., p. 43, ch. 29, § 1, eff. April 9, 1973.]

**Art. 4676. Executor, etc., Made Party, When**

If the defendant die pending the suit, or if the person or persons against whom such suit might have been instituted, if alive, die before the suit is instituted, his or their executors or administrators may be made a party or parties defendant, and the suit instituted and prosecuted to judgment as though such defendant or person or persons had continued to live. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration.

[Acts 1925, S.B. 84.]

**Art. 4677. Damages Apportioned**

The jury may give such damages as they think proportionate to the injury resulting from such death. The amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict.

[Acts 1925, S.B. 84.]

**Art. 4678. Death in Foreign State**

Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. The law of the forum shall control in the prosecution and maintenance of such action in the courts of this State in all matters pertaining to the procedure.

[Acts 1925, S.B. 84.]



**TITLE 78**  
**INSURANCE**

*For text of Insurance Code and Title 78,  
Insurance, see Volume 2.*

# TITLE 79

## INTEREST—CONSUMER CREDIT—CONSUMER PROTECTION

Subtitle	Article
1. Interest .....	5069-1.01
2. Consumer Credit .....	5069-2.01
3. Consumer Protection .....	5069-9.01

*Title 79, Interest, Revised Civil Statutes, 1925, consisting of articles 5069 to 5074a as amended by Acts 1963, 58th Leg., p. 550, ch. 205, §§ 26 to 28, was repealed by Acts 1967, 60th Leg., p. 609, ch. 274, § 5. See art. 5069-50.03.*

*Title 79, Interest—Consumer Credit—Consumer Protection, as herein set out, consisting of articles 5069-1.01 to 5069-50.06, was enacted by Acts 1967, 60th Leg., p. 609, ch. 274, §§ 1 to 4, 6 to 8.*

*For effective date, see art. 5069-50.06.*

### DISPOSITION TABLE

Showing where provisions of former articles 5069 to 5074a of Title 79 are now covered in article 5069-1.01 et seq., as enacted by Acts 1967, 60th Leg., p. 608, ch. 274.

Former Article	New Article
5069 .....	5069-1.01, 5069-1.02
5070 .....	5069-1.03
5071 .....	5069-1.04
5072 .....	5069-1.05
5073 .....	5069-1.06
5074a .....	5069-7.01 to 5069-7.10

Acts 1967, 60th Leg., p. 608, ch. 274, § 1, read as follows:

#### "DECLARATION OF LEGISLATIVE INTENT

"The Legislature finds as facts and determines:

"(1) Many citizens of our State are being victimized and abused in various types of credit and cash transactions. These practices imposed a great hardship upon the people of our State.

"(2) Credit in its various forms is one of the most essential and vital elements of our economy. It can be truly said that credit affects every citizen every day. Credit transactions in our State amount to many billions of dollars per year.

"(3) Credit abuses now existing in our State stem from the fact that many types of credit transactions are not now subject to effective public regulation and control and the penalties imposed for usury do not provide effective or workable safeguards in this vital area of economic activity.

"(4) Such abuses are especially prevalent in the area of consumer transactions both cash and credit. Unscrupulous operators, lenders and vendors, many of whom are transient to our State, are presently engaged in many abusive and deceptive practices in the conduct of their businesses. These unregulated practices bring great social and economic hardship to many citizens of our State. They impose intolerable burdens on those segments of our society which can least afford to bear them—the uneducated, the unsophisticated, the poor and the elderly.

"(5) These facts conclusively indicate a need for a comprehensive code of legislation to clearly define interest and usury, to classify and regulate loans and lenders, to regulate credit sales and services, and place limitations on charges imposed in connection with such sales and services, to provide for consumer education and

debt counseling, to prohibit deceptive trade practices in all types of consumer transactions, and to provide firm and effective penalties for usury and other prohibited practices.

"(6) It is the intent of the Legislature in enacting this revision of Title 79 of the Revised Civil Statutes of Texas, 1925, to protect the citizens of Texas from abusive and deceptive practices now being perpetrated by unscrupulous operators, lenders and vendors in both cash and credit consumer transactions and to implement the mandate of Section II of Article XVI of the Constitution of Texas which authorizes the Legislature to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest, and thus serve the public interest of the people of this State."

### SUBTITLE ONE—INTEREST

Chapter	Article
1. Interest .....	5069-1.01

#### CHAPTER ONE. INTEREST

Article	
5069-1.01.	Definitions.
5069-1.02.	Maximum Rates of Interest.
5069-1.03.	Legal Rate Applicable.
5069-1.04.	Limit on Rate.
5069-1.05.	Rate of Judgments.
5069-1.06.	Penalties.

#### Art. 5069-1.01. Definitions

(a) "Interest" is the compensation allowed by law for the use or forbearance or detention of money; provided however, this term shall not include any time price differential however denominated arising out of a credit sale.

(b) "Legal Interest" is that interest which is allowed by law when the parties to a contract have not agreed on any particular rate of interest.

(c) "Conventional Interest" is that interest which is agreed upon and fixed by the parties to a written contract.

(d) "Usury" is interest in excess of the amount allowed by law.

(e) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-1.02. Maximum Rates of Interest

Except as otherwise fixed by law, the maximum rate of interest shall be ten percent per annum. A greater rate of interest than ten percent per annum unless otherwise authorized by law shall be deemed usurious. All contracts for usury are contrary to public policy and shall be subject to the appropriate penalties prescribed in Article 1.06 of this Subtitle.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-1.03. Legal Rate Applicable**

When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all written contracts ascertaining the sum payable, from and after the time when the sum is due and payable; and on all open accounts, from the first day of January after the same are made.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-1.04. Limit on Rate**

The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten percent per annum on the amount of the contract; and all other written contracts whatsoever, except those otherwise authorized by law, which may in any way, directly or indirectly, provide for a greater rate of interest shall be subject to the appropriate penalties prescribed in this Subtitle.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-1.05. Rate of Judgments**

All judgments of the courts of this State shall bear interest at the rate of six percent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six percent per annum, in which case the judgment shall bear the same rate of interest specified in such contract, but shall not exceed ten percent per annum, from and after the date of such judgment.

[Acts 1967, 60th Leg., p. 610, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-1.06. Penalties**

(1) Any person who contracts for, charges or receives interest which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest contracted for, charged or received, and reasonable attorney fees fixed by the court provided that there shall be no penalty for a violation which results from an accidental and bona fide error.

(2) Any person who contracts for, charges or receives interest which is in excess of double the amount of interest allowed by this Subtitle shall forfeit as an additional penalty, all principal as well as interest and all other charges and shall pay reasonable attorney fees set by the court; provided further that any such person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not more than One Thousand Dollars. Each contract or transaction in violation of this section shall constitute a separate offense punishable hereunder.

(3) All such actions brought under this Article shall be brought in any court of this State having jurisdiction thereof within four years from the date when the usurious charge

was received or collected in the county of the defendant's residence, or in the county where the interest in excess of the amount authorized by this Subtitle has been received or collected, or where such transaction had been entered into or where the parties who paid the interest in excess of the amount authorized by this Subtitle resided when such transaction occurred, or where he resides.

[Acts 1967, 60th Leg., p. 610, ch. 274, § 2, eff. Oct. 1, 1967.]

**SUBTITLE TWO—CONSUMER CREDIT**

Chapter	Article
2. General Provisions .....	5069-2.01
3. Regulated Loans .....	5069-3.01
4. Installment Loans .....	5069-4.01
5. Secondary Mortgage Loans .....	5069-5.01
6. Retail Installment Sales .....	5069-6.01
7. Motor Vehicle Installment Sales .....	5069-7.01
8. Penalties .....	5069-8.01

**CHAPTER TWO. GENERAL PROVISIONS**

Article	
5069-2.01.	General Definitions.
5069-2.02.	Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection.
5069-2.03.	Investigation and Enforcement.
5069-2.04.	Hearings and Review.
5069-2.05.	Credit Unions.
5069-2.06.	Advertising.
5069-2.07.	Credit and Loans to Individuals.

**Art. 5069-2.01. General Definitions**

The following words and terms used in this Subtitle shall, unless the context clearly requires a different meaning, have the following meanings. The meanings applied to the singular forms shall also apply to the plural.

(a) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity however organized.

(b) "License" means the authority to do business under Chapter 3 of this Subtitle.

(c) "Licensee" means any person to whom one or more licenses have been issued.

(d) "Bank" shall mean any person doing business under the authority of and as permitted by the Texas Banking Code of 1943,<sup>1</sup> as amended, or any person organized under the provisions of Title 12, United States Code, Section 21 (U.S.Rev.Statutes 5133) and the amendments thereto.

(e) "Savings and Loan Association" means any person doing business under the authority of and as permitted by the "Texas Savings and Loan Act"<sup>2</sup> or any person incorporated under the provisions of the Home Owners' Loan Act of 1933 and the amendments thereto.<sup>3</sup>

(f) "Credit Union" means any person doing business under the authority of and as permitted by Articles 2461 through

2484, Revised Civil Statutes of Texas, 1925, as amended and the amendments thereto,<sup>4</sup> and Section 5 of House Bill No. 47, Acts of the 46th Legislature, Regular Session, 1939, and Chapter 173, Acts of the 51st Legislature, Regular Session, 1949, relating to Credit Unions and the amendments thereto,<sup>5</sup> or any person organized under the provisions of the Federal Credit Union Act and the amendments thereto.

(g) "Cash advance" means the amount of cash or its equivalent the borrower actually receives and shall also include that paid out at his direction or request, on his behalf or for his benefit.

(h) "Interest" is the compensation allowed by law for the use or forbearance or detention of money; provided, however, this term shall not include any time price differential however denominated arising out of a credit sale.

(i) "Amount of loan" means the cash advance plus the interest.

(j) "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date then the last day of such following calendar month, and when computations are made for a fraction of a month a day shall be one-thirtieth of a month.

(k) "Finance Commission" means the Finance Commission of Texas created by the Texas Banking Code of 1943, or any subcommittee created by any rule or regulation of the Finance Commission.

(l) "Consumer Credit Commissioner" or "Commissioner" when used in general application shall mean the Consumer Credit Commissioner; provided however, the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to state chartered banks operating under the authority of this Subtitle shall mean the Banking Commissioner of the State of Texas and in their relation and application to federally chartered banks operating under the authority of this Subtitle shall mean that official exercising authority over the operations of such banks equivalent to the authority exercised by the Banking Commissioner of the State of Texas; and provided further that the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to state chartered savings and loan associations operating under the authority of this Subtitle shall mean the Savings and Loan Commissioner of the State of Texas, and in their relation and application to federally chartered savings and loan associations operating under the authority of this Subtitle shall mean that official exercising authority over the operation of such savings and loan associations

equivalent to the authority exercised by the Savings and Loan Commissioner of the State of Texas; and provided further, that the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to credit unions operating under the authority of this Subtitle shall mean the Credit Union Supervisor of the State Banking Department and when used in application to federally chartered credit unions shall mean that official exercising authority equivalent to the authority exercised by the Credit Union Supervisor of the State Banking Department; except however, that all duties to be performed and powers to be exercised regarding issuance of licenses in accordance with the provisions of this Subtitle, promulgation of annual report forms, receipt of annual reports and compilation of information contained therein in accordance with this Subtitle, and promulgation of rules and regulations for licensees, adopted by the Finance Commission, in accordance with this Subtitle, shall be performed by the Consumer Credit Commissioner as to all persons holding licenses hereunder.

[Acts 1967, 60th Leg., p. 611, ch. 274, § 2, eff. Oct. 1, 1967.]

<sup>1</sup> Article 342-101 et seq.

<sup>2</sup> Article 852a.

<sup>3</sup> 12 U.S.C.A. § 1461 et seq.

<sup>4</sup> Repealed. See, now, art. 2461-1 et seq.

<sup>5</sup> Article 2462 (repealed. See, now, arts. 2461-15, 2461-24).

#### Art. 5069-2.02. Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection

(1) There is hereby created the Office of Consumer Credit Commissioner of the State of Texas. The Commissioner shall be appointed by the Finance Commission and shall serve at the pleasure of the Finance Commission. The Consumer Credit Commissioner shall be an employee of the Finance Commission, subject to its orders and directions.

(2) The Consumer Credit Commissioner shall, from time to time, as directed by the Finance Commission, submit to the Finance Commission a full and complete report of the receipts and expenditures of this Office, and the Finance Commission may, from time to time, examine the financial records of the Office of Consumer Credit Commissioner, or cause them to be examined. In addition, the Office of Consumer Credit Commissioner shall be audited from time to time by the state auditor in the same manner as state departments, and the actual costs of such audit shall be paid to the state auditor from the funds of the Office of the Consumer Credit Commissioner. The Finance Commission shall report to the Governor of the State of Texas the receipts and disbursements of the Office of Consumer Credit Commissioner for each calendar year.

(3) There is hereby created the Division of Consumer Protection under the direction and

supervision of the Consumer Credit Commissioner. The Consumer Credit Commissioner shall have authority to appoint and remove, and prescribe the duties of, such assistant commissioners, examiners and employees as may be necessary to maintain and operate the Office of the Consumer Credit Commissioner and the Division of Consumer Protection.

(4) The Consumer Credit Commissioner shall enforce the provisions of Chapters 2, 3, 4, 5, 6, 7, 8, and 9 of this Title in person through assistant commissioners or any examiner or employee. The Consumer Credit Commissioner through the Division of Consumer Protection shall enforce Chapter 10 of this Title. The Consumer Credit Commissioner, each assistant commissioner, each examiner and each employee shall not be personally liable for damages occasioned by his official act or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above-mentioned officers or employees by reason of his official act or omission whether or not at the time of the institution of the act the defendant has terminated his services with the Office of the Consumer Credit Commissioner.

(5) The Consumer Credit Commissioner, assistant commissioners, examiners and employees shall, before entering upon the duties of office, take an oath of office and make a fidelity bond in the sum of Ten Thousand Dollars payable to the Finance Commission and its successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the Finance Commission. The bond shall be in form approved by the Finance Commission.

(6) The Consumer Credit Commissioner shall also have responsibility to coordinate, encourage, aid and assist public and private agencies, organizations and groups, and consumer credit institutions in the development and operation of voluntary educational and debt counseling programs designed to promote the prudent and beneficial use of consumer credit by citizens of the State.

(7) The Consumer Credit Commissioner through the Division of Consumer Protection shall also have the responsibility to coordinate, encourage, aid and assist public and private agencies, organizations and groups and consumer protection institutions in the development and operation of voluntary education consumer protection programs designed to promote prudent and informed consumer action by the citizens of the State.

[Acts 1967, 60th Leg., p. 612, ch. 274, § 2, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2379, ch. 739, § 1, eff. June 8, 1971.]

#### Art. 5069-2.03. Investigation and Enforcement

(1) Upon receipt of written complaint or other reasonable cause to believe that any provision of Subtitles Two or Three of this Title are being violated by any person, the Consumer

Credit Commissioner may request such person to furnish information in regard to a specific loan or retail transaction or business practice alleged to be in violation of Subtitles Two or Three of this Title.

(2) If any such person shall fail to comply with such a request the Consumer Credit Commissioner shall have the authority to conduct an investigation to determine whether the provisions of Subtitles Two or Three of this Title are being violated.

(3) In the course of any investigation looking to the enforcement or administration of any provision of Subtitles Two or Three of this Title, the Consumer Credit Commissioner may require by subpoena or summons, issued by the Consumer Credit Commissioner addressed to any peace officer within this State, the attendance and testimony of witnesses, and the production of books, accounts, papers, correspondence, or records (excepting such as are absolutely necessary for the continued course of business which shall not be removed from the office or place of business) which such books, accounts, papers, correspondence, or records the Consumer Credit Commissioner shall have the right to examine or cause to be examined, at the office, or place of business, and to require copies of such portions thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of such concern or an officer of such concern, and shall, when certified by the Consumer Credit Commissioner, be admissible in evidence in any investigation or hearing under Subtitles Two and Three of this Title or in an appeal to the District Court as provided by Subtitles Two and Three of this Title and for this purpose the Consumer Credit Commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the commissioner, the Consumer Credit Commissioner may invoke the aid of the district court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, correspondence, records and other documents touching the matter in question. Upon the filing of such application to enforce such subpoena, which application shall be treated in the same manner as a motion in a civil suit pending in said court, the court shall forthwith set such application for hearing and shall cause a notice of the filing of such application and of such hearing to be served upon the party to whom such subpoena is directed. Such notice may be served by any peace officer in the State of Texas. Such application shall take precedence over all other matters of a different nature pending before such court. Any failure to obey such order of the court may be punished by such court as contempt thereof.

(4) In the course of any investigation described in Section (3) of this Article, the Con-

sumer Credit Commissioner may appoint a hearing officer to conduct such investigation and such hearing officer shall be vested for the purpose of such investigation with the power and authority as the Consumer Credit Commissioner would have if he were personally conducting such investigation, provided that such hearing officer shall not be authorized to make any order upon the subject matter of such investigation; and provided further, that the record of any investigation conducted before the hearing officer may be considered by the Consumer Credit Commissioner in the same manner and to the same extent as evidence that is adduced before him personally in any investigation.

(5) The fee for serving the subpoena shall be the same as that paid a sheriff or constable for similar services. Each witness required to attend before the Commissioner shall receive for each days attendance, the sum of Two Dollars and shall receive in addition the sum of Ten Cents for each mile traveled by such witness by the usual route going to or returning from the place where his presence is required, provided that such fees shall not become payable until the witness has actually appeared at such hearing. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for other expenses incident to the administration and enforcement of Subtitles Two and Three of this Title.

(6) The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Consumer Credit Commissioner upon any party in interest to the record or may be divided between any and all parties in interest to the record in such proportion as the Commissioner may determine.

(7) Whenever the Consumer Credit Commissioner has reasonable cause to believe that any person is violating any provisions of Subtitles Two and Three of this Title he may in addition to all actions provided for, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought in any district court of this State having jurisdiction and venue, on the relation of the Attorney General at the request of the Commissioner, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of Subtitles Two

and Three of this Title through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as he would have under Articles 2293 through 2319, inclusive, Revised Civil Statutes of Texas, 1925, as amended, if he had been appointed pursuant to paragraph four of Article 2293.

[Acts 1967, 60th Leg., p. 612, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-2.04. Hearings and Review

(1) At all hearings before the Consumer Credit Commissioner, parties in interest shall have the right to appear in person and by counsel, and to present oral and written evidence. If requested by a party in interest, a record shall be made of all evidence offered by such party and all other evidence considered by the Consumer Credit Commissioner.

(2) Any party in interest aggrieved by any order, ruling or decision of the Consumer Credit Commissioner may, within thirty days after the date of entry, file in the District Court of Travis County, Texas, a petition against the Consumer Credit Commissioner officially as defendant, alleging therein in brief detail the order, ruling or decision complained of and praying for a reversal or modification thereof. The Consumer Credit Commissioner shall, within twenty days after the service upon him of such petition, certify to said District Court the record of the proceedings to which the petition refers, or such portion thereof as may be required by the petitioner. The cost of preparing and certifying such record shall be paid to the Consumer Credit Commissioner by the petitioner and taxed as a part of the costs of the case. Upon the filing of an answer by the Consumer Credit Commissioner, the case before the District Court shall be at issue, without further pleadings, and upon application of either party shall be advanced and heard without further delay. The order of the Consumer Credit Commissioner shall be sustained unless the hearing was conducted in a manner contrary to the rudiments of a fair hearing; or the order was based upon an error of law which affected petitioner's substantial rights; or was arbitrary, capricious or unreasonable; or the findings of fact were not reasonably supported by substantial evidence in the record, considered as a whole, adduced before the Consumer Credit Commissioner. Provided, however, that any appeal to the District Court of Travis County, Texas, of an order, ruling or decision of the Consumer Credit Commissioner, refusing to grant a license or licenses to an applicant or revoking the license or licenses of a licensee, such appeal shall be upon trial de novo as that term is used in appealing from justice of the peace courts to county courts.

(3) Upon a showing of good cause therefor by a party in interest, the Consumer Credit Commissioner or the court may enter an order staying, pending appeal, the effect of an order

of the Consumer Credit Commissioner from which the party in interest desires to appeal. [Acts 1967, 60th Leg., p. 614, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-2.05. Credit Unions

Notwithstanding any provisions to the contrary contained in this subtitle, credit unions shall not contract for or receive interest in excess of the amount set forth in Section 5 of Article 2462, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and Section 1757 of Chapter 14 of Title 12 of the United States Code, as amended.<sup>2</sup>

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967.]

<sup>1</sup> Repealed. See, now, arts. 2461-15 and 2461-24.

<sup>2</sup> 12 U.S.C.A. § 1757.

#### Art. 5069-2.06. Advertising

No person shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan or credit transaction regulated by Subtitle Two. If rates or charges are stated in advertising they shall be stated fully and clearly.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-2.07. Credit and Loans to Individuals

No licensee under Chapter 3 of this Title or other person involved in transactions regulated by Subtitle Two of this Title may deny an individual credit or loan in his or her name, or restrict or limit the credit or loan granted solely on the basis of sex.

[Acts 1973, 63rd Leg., p. 1293, ch. 483, § 1, eff. Aug. 27, 1973.]

### CHAPTER 3. REGULATED LOANS

#### Article

- 5069-3.01. Scope.
- 5069-3.02. Application for License, Fees, Bond, Appointment of Statutory Agent.
- 5069-3.03. Issuance or Denial of License.
- 5069-3.04. Issuance of License to Banks, Savings and Loan Associations, and Credit Unions.
- 5069-3.05. License, Annual Fee, Minimum Assets.
- 5069-3.06. Offices, Removal.
- 5069-3.07. Revocation, Suspension, Surrender, Reinstatement of Licenses.
- 5069-3.08. Examination of Licensees, Access to Records, Investigation.
- 5069-3.09. Investigation.
- 5069-3.10. Records.
- 5069-3.11. Annual Reports.
- 5069-3.12. Regulations, Copies, Public Record.
- 5069-3.13. Advertising.
- 5069-3.14. More Than One Business in Single Office.
- 5069-3.15. Maximum Rates of Interest.
- 5069-3.16. Alternative Rates of Interest Authorized.
- 5069-3.17. Repealed.
- 5069-3.18. Insurance.
- 5069-3.19. Licensee's Duty to Borrower.
- 5069-3.20. Prohibited Practices.
- 5069-3.21. Limitation of Loan Period.

#### Art. 5069-3.01. Scope

(1) On or after the effective date of this Chapter, no person shall, without first obtaining a license from the Consumer Credit Commissioner, engage in the business of making, transacting, or negotiating loans with cash advances of Two Thousand, Five Hundred Dollars or less, and contract for, charge or receive, directly, or indirectly, on or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense or other thing or otherwise, which in the aggregate are greater than such person would be permitted by law to charge if he were not a licensee under this Chapter.

(2) The provisions of Section 3.01(1) shall apply to any person who seeks to evade its application by any device, subterfuge or pretense whatsoever.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967; Acts 1973, 63rd Leg., p. 1772, ch. 648, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-3.02. Application for License, Fees, Bond, Appointment of Statutory Agent

(1) Application for a license shall be under oath, shall give the approximate location from which the business is to be conducted, and shall contain such relevant information as the Consumer Credit Commissioner may require, including identification of the principal parties in interest, to provide the basis for the findings necessary under Article 3.03. When making application, for one or more licenses, the applicant shall pay Two Hundred Dollars to the Consumer Credit Commissioner as an investigation fee and One Hundred Dollars for each license as the annual fee provided in this Chapter for the current calendar year, provided if a license is granted after June 30th in any year, such fee shall be Fifty Dollars for that year.

(2) Every licensee shall maintain on file with the Consumer Credit Commissioner a written appointment of a resident of this State as his agent for service of all judicial or other process or legal notice, unless the licensee has appointed an agent under another statute of this State. In case of noncompliance, such service may be made on the Consumer Credit Commissioner.

(3) Every applicant shall, also, at the time of filing any such application, file with the Consumer Credit Commissioner, if he so requires, a bond satisfactory to him and in an amount not to exceed Five Thousand Dollars for the first license and One Thousand Dollars for each additional license with a surety company qualified to do business in this State as surety, whose total liability in the aggregate shall not exceed the amount of such bond so fixed. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Chapter. Such bond shall be conditioned that said obligor will faithfully conform to and

abide by the provisions of this Chapter and of all rules and regulations lawfully made by the Consumer Credit Commissioner hereunder, and will pay, to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Chapter during the calendar year for which said bond is given.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.03. Issuance or Denial of License

(1) On filing of such application, bond, and payment of the required fees, the Consumer Credit Commissioner shall investigate the facts and if he shall find the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant belief the business will be operated lawfully and fairly, within the purposes of this Chapter, and the applicant has available for the operation of such business net assets of at least Twenty-five Thousand Dollars, he shall grant such application and issue to the applicant a license which shall be his license and authority to make loans under the provisions of this Chapter.

(2) If the Consumer Credit Commissioner shall not so find, he shall notify the applicant, who shall, on request within thirty days, be entitled to a hearing on such application within sixty days after the date of said request. The investigation fee shall be retained by the Consumer Credit Commissioner, but the annual fee shall be returned to the applicant in the event of denial.

(3) The Consumer Credit Commissioner shall grant or deny each application for a license within sixty days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Consumer Credit Commissioner.

[Acts 1967, 60th Leg., p. 616, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.04. Issuance of License to Banks, Savings and Loan Associations, and Credit Unions

(1) Any bank, savings and loan association or credit union doing business under the laws of this State or of the United States shall receive a license upon notification to the Consumer Credit Commissioner of its intention to operate under the provisions of this Chapter. The Consumer Credit Commissioner shall forthwith issue a license to any such bank, savings and loan association or credit union.

(2) Examination fees, and other charges, imposed upon banks, savings and loan associations and credit unions operating under the laws of this State, or of the United States, constitute the equivalent of the investigation fee and annual license fee otherwise imposed in this Chapter, and any bank, savings and loan

association, or credit union, holding a license under this Chapter, shall not be required to pay such investigation fee or annual license fee.

(3) Funds required to be maintained as reserves by banks, savings and loan associations and credit unions operating under the laws of this State, or of the United States, constitute an adequate reserve for the payment of any claim arising out of operations under this Chapter, and any bank, savings and loan association, or credit union, holding a license under this Chapter, need not provide the bond otherwise required by this Chapter.

[Acts 1967, 60th Leg., p. 617, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.05. License, Annual Fee, Minimum Assets

(1) Each license shall state the address of the office from which the business is to be conducted and the name of the licensee. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Consumer Credit Commissioner.

(2) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1st, pay the Consumer Credit Commissioner One Hundred Dollars for each license held by him, as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Consumer Credit Commissioner, the license shall thereupon expire but not before December 31st of any year for which an annual fee has been paid.

(3) (a) Every licensee shall maintain net assets of at least Twenty-five Thousand Dollars, either used or readily available for use, in the conduct of the business of each licensed office.

(b) Provided, however, any person holding a license under the Texas Regulatory Loan Act as of the effective date of this Chapter shall only be required to maintain net assets of at least Fifteen Thousand Dollars either used or readily available for use in the conduct of the business of each such licensed office. If such license is transferred to any other person, such other person shall be required to maintain minimum assets required under Subsection (a) of this Section.

(c) Provided further, that any person who has paid prior to April 1, 1967, the pawnbroker's occupational tax imposed under the terms of Article 19.01(4)<sup>1</sup> of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, and who has applied for a license to operate under the authority of this Chapter within thirty days of the effective date of this Chapter shall not be required to meet the requirement of minimum assets imposed in Subsection (a) herein; provided, however, if any license



issued on the basis of the payment of such tax is transferred, the person to whom such license is transferred shall be required to meet the minimum assets required under Subsection (a) of this section.

[Acts 1967, 60th Leg., p. 617, ch. 274, § 2, eff. Oct. 1, 1967.]

<sup>1</sup> Repealed.

**Art. 5069-3.06. Offices, Removal**

(1) A separate license shall be required for each office operated under this Chapter. The Consumer Credit Commissioner may issue more than one license to any one person upon compliance with this Chapter as to each license. Nothing contained herein, however, shall be construed to require a license for any place of business devoted to accounting or other record-keeping and where loans under this Chapter are not made.

(2) When a licensee wishes to move his office to another location he shall give thirty days' written notice to the Consumer Credit Commissioner, who shall amend the license accordingly.

(3) The Consumer Credit Commissioner may issue more than one license but not more than sixty licenses to any one person on compliance with this Chapter as to each license. And it shall be unlawful for any person, after the effective date of this Chapter, directly or indirectly, or through subsidiaries or holding companies, to hold or have an interest in more than sixty licenses, the business thereof, or any interest in such license. Any person holding a license under this Chapter which shall violate any provision hereof shall be subject to forfeiture of his license, and if a corporation, its charter shall be subject to forfeiture, and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file suit for such forfeiture of charter and cancellation of the license in a District Court in Travis County, Texas.

[Acts 1967, 60th Leg., p. 617, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.07. Revocation, Suspension, Surrender, Reinstatement of Licenses**

(1) The Consumer Credit Commissioner may, after notice and hearing, suspend or revoke any license if he finds that:

(a) The licensee has failed to pay the annual license fee imposed by this Chapter or an examination fee, investigation fee or other fee or charge imposed by the Consumer Credit Commissioner under the authority of this Chapter, or that

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Chapter or any regulation or order lawfully made pursuant to and within the authority of this Chapter; or that

(c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application

for such license, clearly would have justified the Consumer Credit Commissioner in refusing to issue such license.

(2) The hearing shall be held upon twenty days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the suspension or revocation. The hearing shall be full, fair and public. Such suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact and a copy thereof shall be forthwith delivered to the licensee. Such order, findings, and the evidence considered by the Consumer Credit Commissioner shall be filed with the public records of the Consumer Credit Commissioner.

(3) Any licensee may surrender any license by delivering it to the Consumer Credit Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(4) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

(5) The Consumer Credit Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Consumer Credit Commissioner in refusing originally to issue such license under this Chapter.

[Acts 1967, 60th Leg., p. 618, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.08. Examination of Licensees, Access to Records, Investigation**

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such licensee insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any licensee who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or

revocation of such license. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, and the total cost so assessed and charged a licensee in any one calendar year shall not exceed Two Hundred Fifty Dollars for each licensed office.

[Acts 1967, 60th Leg., p. 618, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.09. Investigation

For the purpose of discovering violations of this Chapter or of securing information required hereunder, the Consumer Credit Commissioner or his duly authorized representatives may investigate the books, accounts, papers, correspondence and records of any licensee or other person whom the Consumer Credit Commissioner has reasonable cause to believe is violating any provision of this Chapter whether or not such person shall claim to be within the authority or scope of this Chapter. For the purposes of this Article any person who advertises for, solicits or holds himself out as willing to make loans with cash advances in the amount or the value of Two Thousand, Five Hundred Dollars or less, shall be presumed to be engaged in the business described in Article 3.01 of this Chapter.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.10. Records

(1) Each licensee shall keep or make available in this State such books and records relating to loans made under this Chapter as are necessary to enable the Commissioner to determine whether the licensee is complying with this Chapter. However, a licensee making, transacting, or negotiating loans in Texas principally by mail shall pay to the Commissioner an amount to be assessed by him to cover the direct and indirect costs of examinations and a proportionate share of general administrative expense. Such books and records shall be consistent with accepted accounting practices.

(2) Each licensee shall preserve or make available such books and records in this State, or at the principal place of business of a licensee who makes, transacts, or negotiates loans principally by mail, for four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later. Each licensee's system of records shall be accepted if it discloses such information as may be reasonably required under Section (1) of this Article. All obligations signed by borrowers shall be kept at an office in this State designated by the licensee, except when transferred under an agreement which gives the Commissioner access thereto.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967; Acts 1973, 63rd Leg., p. 1772, ch. 648, § 2, eff. Aug. 27, 1973.]

#### Art. 5069-3.11. Annual Reports

Each licensee shall, annually on or before the first day of April or other date thereafter fixed by the Consumer Credit Commissioner file a report with the Consumer Credit Commissioner giving such relevant information as the Consumer Credit Commissioner may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Consumer Credit Commissioner, who shall make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports shall be held confidential.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.12. Regulations, Copies, Public Record

(1) The State Finance Commission may make regulations necessary for the enforcement of this Chapter and consistent with all of its provisions. Each such regulation shall refer to the Article, Section or Subsection to which it applies. Before making a regulation the Consumer Credit Commissioner shall give every licensee at least thirty days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner shall recommend, and the State Finance Commission, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form stating the date of adoption and the date of promulgation. Each regulation shall be entered in a permanent book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee and no regulation shall become effective until the expiration of at least twenty days after such mailing.

(2) On application of any person and payment of the costs therefor, the Consumer Credit Commissioner shall furnish under his seal and signed by him or his assistants, a certificate of good standing or a certified copy of any license, regulation or order.

(3) Any transcript of any hearing held by the Consumer Credit Commissioner under this Chapter shall be a public record and open to inspection at all reasonable times.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.13. Advertising

No licensee shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan. If rates or charges are stat-

ed in advertising they shall be expressed in terms of a simple annual interest rate.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.14. More Than One Business in Single Office**

(1) A licensee may conduct the business of making loans under this Chapter within any offices, suite, room or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless the Commissioner shall find, after a hearing, that the conduct by the licensee of such other business in the particular licensed office has concealed evasions of this Chapter and shall order such licensee, in writing, to desist from such conduct in such office.

(2) No licensee shall conduct the business of making loans provided for by this Chapter under any name, or at any place of business within this State, other than that stated in the license.

(3) Nothing in this Chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed office is situated or to prohibit the licensee from making loans by mail.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.15. Maximum Rates of Interest**

(1) Every licensee may contract for and receive on any loan made under this Chapter repayable in consecutive monthly installments, substantially equal in amount, an add-on interest charge computed on the cash advance for the full term of the loan contract in accordance with the following schedule:

Eighteen Dollars per One Hundred Dollars per annum on that part of the cash advance not in excess of Three Hundred Dollars, and Eight Dollars per One Hundred Dollars per annum on that part of the cash advance in excess of Three Hundred Dollars but not in excess of Twenty-five Hundred Dollars.

(2) Interest authorized in Section (1) of this Article shall be computed at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and shall be computed on the basis of a full month for any fractional period in excess of fifteen days. Interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a licensee may make loans which require repayment in irregular or unequal installments and may compute, contract for, charge or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article, provided the total interest charge as scheduled shall not produce an interest yield in excess of that permitted under Section

(1) of this Article for the time the loan is scheduled to be outstanding.

(4) Notwithstanding any other provision of this Chapter, a borrower and a licensee may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower may be made from time to time. The agreement shall contain the date of the agreement; the name and address of each borrower and of the licensee; the nature of the security, if any, the charges in addition to interest contracted for as authorized by this Chapter; and the charge for default and deferment authorized by this Chapter and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth the maximum amount that may be borrowed; the method by which loans or advances are to be made, whether by check or draft drawn on the licensee or otherwise; a simple statement of the method by which the amount of the finance charge is to be calculated; the insurance coverages afforded the borrower through the lender and, if a charge for insurance is to be made, a simple statement of the amount of such charge or the method by which it will be calculated.

If during a billing cycle the licensee makes a loan or advance or the borrower makes a payment, the licensee shall in accordance with any rules and regulations prescribed by the Commissioner give to the borrower within a reasonable time after the end of the billing cycle a written statement of:

- (a) the outstanding balance at the beginning of the billing cycle;
- (b) loans or advances during the billing period excluding interest and other charges;
- (c) the amount of interest and other charges accrued or debited during the period;
- (d) payments made by the borrower;
- (e) the balance at the end of the billing cycle;
- (f) the amount which must be paid and the date it must be paid to avoid a default.

(5) Additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than

once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the licensee may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full, as of the date of deferment and the refund which would be required for prepayment in full as one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter.

(6) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, after the first installment due date but before the final installment due date, the licensee shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full occurs before the first installment due date the licensee shall retain for each elapsed day from the date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(7) No licensee shall induce or permit any person, or husband and wife, to be obligated, directly or indirectly, under more than one loan contract under this chapter at the same time for the purpose, or with the effect, of ob-

taining a higher authorized charge than would otherwise be permitted by this chapter; but such limitation shall not apply to the acquisition by purchase of bona fide retail installment contracts or revolving charge agreements of the borrower incurred for goods, or services, or to pledged loans made pursuant to Article 3.17, and provided further, if a licensee purchases all or substantially all the loan contracts of another licensee hereunder and has at the time of purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled to collect principal and authorized charges thereon according to the terms of each loan contract.

(8) In addition to the authorized charges provided in this chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the licensee, or any other person, in connection with

(a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or

(b) for the forbearance of money, credit, goods or things in action; or

(c) for any other service or services performed or offered.

However, the prohibition set out herein shall not apply to amounts actually incurred by a licensee as court costs; attorney fees assessed by a court; lawful fees for filing, recording, or releasing in any public office any security for a loan; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any security; or fees for noting a lien on or transferring a certificate of title to any motor vehicle offered as security for a loan made under this Chapter, or premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.16 Alternative Rates of Interest Authorized

(1) On loans having a cash advance of One Hundred Dollars or less, a licensee may charge, in lieu of charges specified in Article 3.15, the following amounts:

(a) On any amount up to and including Twenty-nine Dollars and Ninety-nine Cents a charge may be added at the ratio of One Dollar for each Five Dollars advanced to the borrower.

(b) On any cash advance in an amount in excess of Twenty-nine Dollars and Nine-

ty-nine Cents up to and including the amount of Thirty-five Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars per month.

(c) On any cash advance of an amount in excess of Thirty-five Dollars but not more than Seventy Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars and Fifty Cents per month.

(d) On any cash advance of an amount in excess of Seventy Dollars but not in excess of One Hundred Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Four Dollars per month.

(2) The maximum term of any loan made under the terms of this Article shall be one month for each Ten Dollars of cash advance up to a maximum term of six months.

(3) On such loans under this Article, no insurance charges or any other charges of any nature whatsoever shall be permitted.

(4) The acquisition charge authorized herein shall be deemed to be earned at the time a loan is made and shall not be subject to refund. On the prepayment of any loan under this Article the installment account handling charge shall be subject to the provisions of Article 3.15 as it relates to refunds. Provisions of Article 3.15 relating to default charges on loans and the deferment of loans shall apply to loans made under this Article.

(5) The Commissioner shall have authority to formulate schedules providing for repayment in weekly, bi-weekly or semi-monthly installments for use by licensees on loans made under the authority of this Article provided the ratio of charges permitted under such schedules do not exceed the maximum rates authorized in this Article.

[Acts 1967, 60th Leg., p. 623, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.17. Loans Secured by Pledge of Tangible Personal Property

See, now, art. 5069-51.01 et seq.

#### Art. 5069-3.18. Insurance

(1) On any loan having a cash advance of One Hundred Dollars or more, made under the authority of this Chapter, a lender may request or require a borrower to provide credit life insurance and credit health and accident insur-

ance as additional protection for such a loan. Only one policy of life insurance and one policy of health and accident insurance on any one obligor may be in force with respect to any one loan contract at any one time.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure tangible personal property offered as security for a loan. Such insurance and the premiums or charges therefor shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is requested or required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the licensee at a premium or rate of charge not fixed or approved by the State Board of Insurance, the licensee shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the loan statement required by Article 3.19(1).

(4) Such insurance shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance written under this Article is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the

lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg., p. 624, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.19. Licensee's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the licensee shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the licensee;

(b) The date and the amount of the cash advance, the maturity date, and the agreed schedule of payments or a description of such payments;

(c) The nature of the security, if any;

(d) The fees for filing, recording, or releasing any security authorized by this Chapter;

(e) The charges for default and deferment authorized by this Chapter;

(f) The types of insurance, if any, provided in connection with the loan, and the premiums for such insurance;

(g) The amount, in dollars and cents, of interest charges contracted for at the time the loan is made, or the percentage that the interest charges bears to the total amount of the loan expressed as the nominal rate on the average outstanding unpaid balance of the principal amount of the loan;

(h) The total amount, in dollars and cents, of all the charges included in the amount of loan.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The licensee shall give a receipt to the person making a cash payment on any loan.

(3) At any time during regular business hours, the licensee shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the licensee shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, property pledged, or other instrument securing such loan which no longer secures any indebtedness of the borrower to the licensee.

[Acts 1967, 60th Leg., p. 626, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-3.20. Prohibited Practices

(1) No licensee shall take an assignment of wages as security for any loan made under this Chapter, but warrants drawn against any state fund, or any claim against a state fund or a state agency, may be assigned as security for any such loan.

(2) No licensee shall take a lien upon real estate as security for any loan made under this Chapter, except such lien as is created by law upon the recording of an abstract of judgment.

(3) No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding. This prohibition shall not apply to powers of attorney contained in insurance premium finance contracts when limited to the authority to cancel casualty insurance financed under such contract.

(4) No licensee shall take any promise to pay or loan obligation that does not disclose the amount of the cash advance, the time for which it is made, the schedule of payments, the maturity date, the amount of authorized charges and the types of insurance, if any, provided in connection with the loan, and the premiums for such insurance.

(5) Except as specifically provided in Article 3.15(4) no licensee shall take any instrument in which blanks are left to be filled in after the loan is made.

(6) No licensee shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter. [Acts 1967, 60th Leg., p. 626, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.21. Limitation of Loan Period**

(1) No licensee shall enter any contract of loan having a cash advance of Fifteen Hundred Dollars or less under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than thirty-seven calendar months from the date of making such contract.

(2) No licensee shall enter any contract of loan having a cash advance in excess of Fifteen Hundred Dollars under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than forty-three calendar months from the date of making such contract.

[Acts 1967, 60th Leg., p. 627, ch. 274, § 2, eff. Oct. 1, 1967.]

**CHAPTER FOUR. INSTALLMENT LOANS**

**Article**

- 5069-4.01. Installment Loans Authorized.
- 5069-4.02. Insurance.
- 5069-4.03. Lender's Duty to Borrower.
- 5069-4.04. Prohibited Practices.

**Art. 5069-4.01. Installment Loans Authorized**

(1) Any bank, savings and loan association or credit union doing business under the laws of this State or of the United States, and any person licensed to do business under the provisions of Chapter 3 of this Subtitle relating to regulated loans may contract for and receive on any loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, an add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article shall be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and shall be computed on the basis of a full month for any fractional period in excess of fifteen days. Interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a lender may make loans which require repayment in irregular or unequal installments and may compute, contract for, charge or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article, provided the total interest charge as scheduled shall not produce an interest yield in

excess of that permitted under Section (1) of this Article for the time the loan is scheduled to be outstanding.

(4) Notwithstanding any other provision of this Chapter, a borrower and a lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower may be made from time to time. The agreement shall contain the date of the agreement; the name and address of each borrower and of the lender; the nature of the security, if any, the charges in addition to interest contracted for as authorized by this Chapter; and the interest for default and deferment authorized by this Chapter and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth the maximum amount that may be borrowed; the method by which loans or advances are to be made, whether by check or draft drawn on the lender or otherwise; a simple statement of the method by which the amount of the finance charge is to be calculated; the insurance coverages afforded the borrower through the lender and, if a charge for insurance is to be made, a simple statement of the amount of such charge or the method by which it will be calculated. The agreement shall provide for repayment of principal on each installment payment date of not less than five percent of the principal amount of loan outstanding during the installment billing cycle preceding the payment date.

If during a billing cycle the lender makes a loan or advance or the borrower makes a payment, the lender shall in accordance with any rules and regulations prescribed by the Commissioner give to the borrower within a reasonable time after the end of the billing cycle a written statement of:

- (a) The outstanding balance at the beginning of the billing cycle;
- (b) Loans or advances during the billing period excluding interest and other charges;
- (c) The amount of interest and other charges accrued or debited during the period;
- (d) Payments made by the borrower;
- (e) The balance at the end of the billing cycle;
- (f) The amount which must be paid and the date it must be paid to avoid a default.

(5) Additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any sched-

uled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual or deferment or at any time thereafter.

(6) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(7) In addition to the authorized charges provided in this Chapter no further or other

charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as court costs, attorney fees assessed by a court, lawful fees for filing, recording, or releasing to any public office any instrument securing a loan; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any security; or fees for noting a lien on or transferring a certificate of title to any motor vehicle offered as security for a loan made under this Chapter, or premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter.

[Acts 1967, 60th Leg., p. 627, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-4.02. Insurance

(1) On any loan made under the authority of this Chapter, a lender may request or require a borrower to provide credit life insurance and credit health and accident insurance as additional protection for such a loan. Only one policy of life insurance and one policy of health and accident insurance on any one obligor may be in force with respect to any one loan contract at any one time.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure tangible personal property offered as security for a loan. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is requested or required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company au-



thorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the loan statement required by Article 4.03(1).

(4) Such insurance shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance written under this Article is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially

equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg., p. 629, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-4.03. Lender's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender;

(b) The date and the amount of the cash advance, the maturity date, and the agreed schedule of payments or a description of such payments;

(c) The nature of the security, if any;

(d) The fees for filing, recording, or releasing any security authorized by this Chapter;

(e) The charges for default and deferment authorized by this Chapter;

(f) The types of insurance, if any, provided in connection with the loan, and the premiums for such insurance;

(g) The amount, in dollars and cents, of interest charges contracted for at the time the loan is made, or the percentage that the interest charges bears to the total amount of the loan expressed as the nominal rate on the average outstanding unpaid balance of the principal amount of the loan;

(h) The total amount, in dollars and cents, of all the charges included in the amount of loan.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The lender shall give a receipt to the person making a cash payment on any loan.

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, deed of trust, or other instrument securing such loan which no longer secures any indebtedness of the borrower to the licensee.

[Acts 1967, 60th Leg., p. 631, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-4.04. Prohibited Practices

(1) No lender shall take an assignment of wages as security for any loan made under this Chapter.

(2) No lender shall take a lien upon real estate as security for any loan made under this Chapter, except such lien as is created by law upon the recording of an abstract of judgment.

(3) No lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

(4) Except as specifically provided by Article 4.01(4), no lender shall take any promise to pay or loan obligation that does not disclose the amount of the cash advance, the time for which it is made, the schedule of payments, the maturity date, the amount of authorized charges and the types of insurance, if any, provided in connection with the loan, and the premiums for such insurance.

(5) No lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(6) No lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 631, ch. 274, § 2, eff. Oct. 1, 1967.]

### CHAPTER FIVE. SECONDARY MORTGAGE LOANS

#### Article

- 5069-5.01. Definition.  
5069-5.02. Secondary Mortgage Loans Authorized.  
5069-5.03. Insurance.  
5069-5.04. Lender's Duty to Borrower.  
5069-5.05. Prohibited Practices.

#### Art. 5069-5.01. Definition

(1) As used in this Chapter, "secondary mortgage loan" means

(a) a loan made to any person not to be repaid in ninety days or less which is secured, in whole or in part, by any lien or security interest or any interest in real property improved by a dwelling designed for occupancy by four families or less, which property is subject to the lien of one or more liens or security interests, prior mortgages or deeds of trust, or

(b) the purchase of any interest in an existing secondary mortgage loan from the mortgagee made to secure such a loan.

4 West's Tex. Stats. & Codes—49

(2) On or after the effective date of this Chapter, no person, except a bank, savings and loan association or credit union doing business under the laws of this State or of the United States and any person licensed to do business under the provisions of Chapter 3 of this Subtitle, shall engage in the business of making secondary mortgage loans and contract for, charge or receive, directly or indirectly in connection with any such loan, any charge for interest which exceeds ten percent per annum on unpaid principal balances and any lawful charge for compensation, consideration, expense, or any other thing incident to or in connection with the loan which exceeds the amounts a person authorized hereunder would be permitted to charge under Article 5.02(5).

(3) The provisions of this Chapter shall not apply to any seller of property who makes a secondary mortgage loan to secure all or part of the unpaid purchase price.

[Acts 1967, 60th Leg., p. 632, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-5.02. Secondary Mortgage Loans Authorized

(1) Any person authorized to do business under the provisions of this Chapter may contract for and receive on any secondary mortgage loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, and add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article shall be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular monthly installments and shall be computed on the basis of a full month for any fractional period in excess of fifteen days. Interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be

required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (4) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter.

(4) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(5) In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service

or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as:

(i) Appraisal and inspection fees: not to exceed Twenty-five Dollars per parcel or tract of land;

(ii) Investigation of the credit standing or credit worthiness of applicant: not to exceed Twelve Dollars and Fifty Cents;

(iii) Legal fees to an attorney who is not a salaried employee of the lender for the preparation of any and all documents in connection with the transaction: not to exceed Thirty-five Dollars;

(iv) Official filing, recording and construction permit fees;

(v) Insurance as regulated and restricted by Article 5.03;

(vi) Charge for title insurance or for title examination and opinion by an attorney who is not a salaried employee of the lender: not to exceed the charge or premium promulgated by the State Board of Insurance for title insurance for such transaction.

[Acts 1967, 60th Leg., p. 632, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-5.03. Insurance

(1) On any loan made under the authority of this Chapter, a lender may request or require a borrower to provide credit life insurance and credit health and accident insurance as additional protection for such a loan. Only one policy of life insurance and one policy of health and accident insurance on any one obligor may be in force with respect to any one loan contract at any one time.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure property offered as security for a loan. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is requested or required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the

lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverages either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the loan statement required by Article 5.04(1).

(4) Such insurance shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance written under this Article is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any inter-

est on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg., p. 634, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-5.04. Lender's Duty to Borrower

(1) When a secondary mortgage loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender;

(b) The date and the amount of the cash advance, the maturity date, and the agreed schedule of payments or a description of such payments;

(c) The nature of the security, if any;

(d) The fees for filing, recording, or releasing any security authorized by this Chapter;

(e) The charges for default and deferment authorized by this Chapter;

(f) The types of insurance, if any, provided in connection with the loan, and the premiums for such insurance;

(g) The amount, in dollars and cents, of interest charges contracted for at the time the loan is made, or the percentage that the interest charges bears to the total amount of the loan expressed as the nominal rate on the average outstanding unpaid balance of the principal amount of the loan;

(h) The total amount, in dollars and cents, of all the charges included in the amount of loan.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The lender shall give a receipt to a person making a cash payment on any loan.

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, deed of trust, or other instrument representing or securing such loan which no longer secures any indebtedness of the borrower to the licensee.

[Acts 1967, 60th Leg., p. 635, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-5.05. Prohibited Practices**

(1) No lender shall take an assignment of wages as security for any loan made under this Chapter.

(2) No lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

(3) No lender shall take any promise to pay or loan obligation that does not disclose the amount of the cash advance, the time for which it is made, the schedule of payments, the maturity date, the amount of authorized charges and the types of insurance, if any, provided in connection with the loan, and the premiums for such insurance.

(4) No lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(5) No lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 636, ch. 274, § 2, eff. Oct. 1, 1967.]

**CHAPTER SIX. RETAIL INSTALLMENT SALES**

Article  
 5069-6.01. Definitions.  
 5069-6.02. Retail Installment Contracts—Requirements—Disclosure.  
 5069-6.03. Retail Charge Agreements—Requirements—Disclosure.  
 5069-6.04. Insurance.  
 5069-6.05. Prohibited Provisions.  
 5069-6.06. Certificate of Completion or Satisfaction Required in Certain Transactions.  
 5069-6.07. Assignment and Negotiation.  
 5069-6.08. Application.  
 5069-6.09. Waiver.

**Art. 5069-6.01. Definitions**

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

(a) "Goods" means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use, including such property which is furnished or used at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes, but is not limited to, any boat, boat-trailer, motor scooter, motorcycle, camper-type trailer, horse trailer, any vehicle propelled or drawn exclusively by muscular power, and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

The term does not include

(i) money, things in action or intangible personal property, other than merchandise certificates or coupons as herein described; or

(ii) any automobile, mobile home, truck, trailer, semi-trailer, truck tractor or bus designed and used primarily to transport persons or property on a public highway; or

(iii) any vehicle designed to run only on rails or tracks or in the air, as defined in Chapter 7 of this Subtitle.

(b) "Services" means work, labor, or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use, but does not include

(i) the services of a professional person licensed by the State; or

(ii) services for which the cost is by law fixed or approved by, or filed with or subject to approval or disapproval by the United States or the State of Texas, or any agency, instrumentality or subdivision thereof; or

(iii) educational services provided by an accredited college or university or a primary or secondary school providing education required by the State of Texas or services of a kindergarten or nursery school.

(c) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller.

(d) "Retail seller" or "seller" means a person regularly and principally engaged in the business of selling goods or services to retail buyers, but does not include the services of a member of a learned profession.

(e) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this Article, which provides for a time price differential, as defined in this Article, and under which the buyer agrees to pay the unpaid balance in one or more installments, together with a time price differential.

(f) "Retail installment contract" means an instrument (other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto) entered into in this State evidencing a retail installment transaction (whether secured or unsecured). The term "retail installment contract" may include a chattel mortgage, a security agreement, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their

use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

(g) "Retail charge agreement" means an instrument prescribing the terms of retail installment transactions which may be made thereunder from time to time (whether secured or unsecured), and under the terms of which a time price differential, as defined in this Article, is to be computed in relation to the buyer's unpaid balance from time to time.

(h) "Time price differential," however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. The term includes the amounts authorized by this Chapter when the parties have amended the contract to renew, restate, or reschedule the unpaid balance thereof or to extend or defer the scheduled due date of all or any part of any installment or installments.

The term does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees. Nor shall the term be in anywise considered as interest as defined by the laws of this State.

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements.

The term also includes, in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement or construction of real property, the reasonable and necessary fees and costs actually to be paid as:

- (i) Appraisal and inspection fees: not to exceed Twenty-five Dollars per parcel or tract of land;
- (ii) Investigation of the credit standing or credit worthiness of applicant: not to exceed Twelve Dollars and Fifty Cents;
- (iii) Legal fees to an attorney who is not a salaried employee of seller or

holder for the preparation of any and all documents in connection with the transaction: not to exceed Thirty-five Dollars;

(iv) Official filing, recording and construction permit fees;

(v) Charge for title insurance or for title examination and opinion: not to exceed the charge or premium promulgated by the Texas Insurance Commission for title insurance for such transaction.

(j) "Official fees" means the amount of the fees prescribed by law for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created in connection with a retail installment transaction.

(k) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance, if a separate identified charge is made therefor, and the official fees and the time price differential.

(l) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees, less the amount of the buyer's down payment in money or goods or both.

(m) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

(n) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

(o) Words of the masculine gender include the feminine and the neuter and, when the sense so indicates, words of the neuter gender may refer to any gender.

[Acts 1967, 60th Leg., p. 636, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.02. Retail Installment Contracts—Requirements—Disclosure

(1) Each retail installment contract shall be in writing, dated, signed by the retail buyer, and completed as to all essential provisions, except as otherwise provided in Sections (7) and (8) of this Article.

(2) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight-point type. The contract shall be designated "Retail Installment Contract" and shall contain sub-

stantially the following notice printed or typed in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE TIME PRICE DIFFERENTIAL. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."**

(3) The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, a buyer, who has not received delivery of the goods or been furnished or rendered the services, shall have the right to rescind the contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the trade-in allowance thereof. Any acknowledgement by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(4) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and shall reasonably identify the goods sold or to be sold or services furnished or rendered or to be furnished or rendered. Multiple items of goods or services may be described in detail sufficient to identify them in separate writing.

(5) The retail installment contract shall contain and disclose the following items:

- (a) The cash sale price of the goods or services;
- (b) The amount of the buyer's down payment, specifying the amounts paid in money and allowed for goods traded in;
- (c) The difference between items (a) and (b);
- (d) The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage;
- (e) The aggregate amount of official fees;
- (f) The principal balance, which is the sum of items (c), (d) and (e);
- (g) The amount of the time price differential;

(h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (f) and (g);

(i) The number of installments, the amount of each installment and the due date or period thereof. If installment payments other than the final payment are stated as a series of periodic payments equal in period and amount, the number of payments and the amount and due date of each payment need not be separately stated, and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a calendar date or by reference to the date of the contract or to the time of delivery;

(j) The time sale price; and

(k) If any installment (except the down payment) is more than double the average of all other installments (except the down payment), the following legend printed in at least ten-point bold type or typewritten:

**THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS**

followed, if there be but one such larger installment by:

**AN INSTALLMENT OF \$ \_\_\_\_\_ WILL BE DUE ON \_\_\_\_\_**

or, if there be more than one such larger installment, by:

**LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS:**

\_\_\_\_\_ in such latter case, inserting the amount of every such larger installment and of its due date.

(l) Any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise.

(6) (a) A retail installment contract need not be contained in a single document.

(b) If the contract is contained in more than one document, one such document may be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case, such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this Article and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the statement required by Section (13) of this Article.

(7) (a) Retail installment contracts or retail charge agreements negotiated and entered into by mail or telephone, without solicitations in person by salesmen or other representatives of the seller, and based upon a catalog of the seller or other printed solicitation which clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this Article with respect to retail installment contracts shall be applicable to such sales, except that:

(i) The designation and notice provisions of Section (2) of this Article shall not be applicable to such contract; and

(ii) The retail installment contract, when completed by the buyer, need not contain the items required by Section (5) of this Article.

(b) When the order is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by Section (5) of this Article to be included in a retail installment contract. In lieu of delivering a copy of the contract to the buyer as provided in Section (3) of this Article, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract.

(8) A retail installment contract shall not be signed by any party thereto when it contains blank spaces for items which are essential provisions of the transaction; provided, however, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirement of this section, of delivery of a copy of the contract shall be presumptive proof, or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof, of such delivery and of compliance with this section and any other requirement re-

lating to completion of the contract prior to execution thereof by the buyer, in any action or proceeding.

(9) (a) Notwithstanding provisions of any other law, a retail installment contract payable in substantially equal successive monthly installments beginning one month from the date of the contract may provide for, and the seller or holder may then charge, collect and receive a time price differential which shall not exceed an amount determined in accordance with the following schedule:

(i) On so much of the principal balance as does not exceed Five Hundred Dollars, Twelve Dollars per One Hundred Dollars per annum;

(ii) On so much of the principal balance as exceeds Five Hundred Dollars, but is not in excess of One Thousand Dollars, Ten Dollars per One Hundred Dollars per annum;

(iii) On so much of the principal balance as exceeds One Thousand Dollars, Eight Dollars per One Hundred Dollars per annum.

(b) Such time price differential shall be computed on the principal balance of the retail installment contract from the date of the contract until the due date of the final installment, notwithstanding that the balance thereof is payable in installments.

(c) If the retail installment contract is payable in successive monthly installments substantially equal in amount beginning one month from the date of the contract for a period less or greater than a year, or for amounts less or greater than One Hundred Dollars, the amount of the maximum time price differential set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of fifteen days or more may be considered a full month.

(d) If a retail installment contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the first installment is not payable one month from the date of the contract, the time price differential may not exceed an amount which will provide the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(e) Notwithstanding any other provisions of this Article, a minimum time price differential not in excess of the following amounts may be charged on any retail installment contract: Twelve Dollars on any retail installment contract involving an initial principal balance of Seventy-five Dollars or more; Nine Dollars on a retail installment contract involving an initial principal balance of more than Twenty-five



Dollars and less than Seventy-five Dollars and Six Dollars on a retail installment contract involving an initial principal balance of Twenty-five Dollars or less.

(f) No seller shall induce a buyer or any husband and wife to become obligated at substantially the same time under more than one retail installment contract with the same seller for the deliberate purpose of obtaining a higher time price differential than would otherwise be permitted under this Article for one retail installment contract. Provided, however, a subsequent contract entered into between the same buyer and seller more than thirty days from the date of making a prior contract shall be presumed not to be in violation of this subsection.

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, shall receive a refund credit thereon for such prepayment. The amount of such refund credit shall represent at least as great a proportion of the original time price differential, after first deducting therefrom an amount equivalent to the minimum charge authorized in this Article, as

(a) the sum of the monthly unpaid balances under the schedule of payments in the contract (beginning as of the date after such prepayment which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment is prior to the due date of the first installment under the contract, then as of the date after such prepayment which is the next succeeding monthly anniversary date of the date of the contract) bears to

(b) the sum of all the monthly unpaid balances under the schedule of installment payments in the contract. Where the amount of refund credit is less than One Dollar, no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above described method, having due regard for the amount of each installment and to the irregularity of each installment period.

(11) The holder of any retail installment contract if it so provides may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of each installment or Five Dollars, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. Provided, that only one such delinquency charge may be collected on any installment regardless of the period during which it remains in default. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred

for collection to an attorney not a salaried employee of the holder of the contract, and for court costs and disbursements.

(12) (a) The holder of a retail installment contract, upon request of the buyer, may agree to an amendment to extend or defer the scheduled due date of all or any part of any installment or installments and may collect for same a charge computed on the amount of the scheduled installment or installments extended or deferred for the period of extension or deferment at the rate of Fifteen Cents for each Ten Dollars per month; provided that a minimum extension or deferment charge of One Dollar may be charged and collected. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance provided for in the contract and of any additional necessary official fees.

(b) The holder of a retail installment contract, upon request of the buyer may agree to an amendment to renew, restate or reschedule the unpaid balance of the contract and may collect for same a charge to be computed as follows: The sum of the unpaid balance as of the date of the amendment and the cost of any insurance, any additional necessary official fees and any accrued delinquency charges, after deducting an amount which would be equivalent to the required refund credit applicable in the case of prepayment in full as of the date of the amendment charges, shall constitute a principal balance on which a charge may be computed for the term of the amended contract at the applicable rate of charge as provided in Article 6.02.

(c) Any amendment to a retail installment contract must be confirmed in writing and signed by the buyer. The writing shall set forth the terms of the amendment and the new due dates and amounts of the installments, and a copy thereof shall be delivered to the buyer at the time of execution of same. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

(13) Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for each additional statement. A buyer shall be given a written receipt for any payment when made in cash.

(14) (a) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been

fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of such previous contract or contracts. Each subsequent purchase shall be a separate retail installment contract under this Chapter, notwithstanding that the same may be included in and consolidated with one or more of such previous contract or contracts. All the provisions of this Chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this section.

(b) In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this Article, it shall be sufficient if the seller shall prepare a written memorandum of each subsequent purchase, in which case the provisions of Sections (1), (2), (3), and (5) of this Article shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall contain with respect to each subsequent purchase items (a) through (h) of Section (5) of this Article and, in addition, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any. The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(c) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied to the previous purchases; and each payment after such subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with such subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase. The provisions of this Subsection (c) shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

[Acts 1967, 60th Leg., p. 638, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.03. Retail Charge Agreements—Requirements—Disclosure

(1) A retail charge agreement may be established by a seller upon the request of a buyer or prospective buyer. Each such retail charge agreement shall be in writing and signed by the buyer. A copy of such agreement executed on or after the effective date of this Chapter shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature. No agreement executed on or after the effective date of this Chapter shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. If no copy of the agreement is retained by the seller, a notation in his permanent record showing that such agreement was mailed and the date of mailing shall serve as presumptive proof of such mailing. All retail charge agreements executed on or after the effective date of this Chapter shall state the maximum amount or rate of the time price differential to be charged and paid pursuant thereto. Any such agreement shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER—DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS."**

(2) The buyer under the retail charge agreement shall be supplied with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite and disclose the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) The dollar amount of each purchase by or service to the buyer during the period;

(c) The cash price and the purchase or posting date of each purchase or service and, unless a sales slip or a memorandum of each purchase or service is furnished with or prior to the delivery of the statement, a brief description or a reasonable identification of each purchase or service;

(d) The payments made by the buyer and any other credits to the buyer during the period;

(e) The amount, if any, of any time price differential for such period; and

(f) A legend to the effect that the buyer may at any time pay his total unpaid balance or any part thereof.

(3) A retail charge agreement may provide for, and the seller or holder may then, notwithstanding the provisions of any other law, charge, collect and receive a time price differential for the privilege of paying in installments thereunder, which shall not exceed the following:

(a) On so much of the unpaid balance as does not exceed Five Hundred Dollars, Fifteen Cents per Ten Dollars per month; and

(b) If the unpaid balance exceeds Five Hundred Dollars, Ten Cents per Ten Dollars per month on that portion over Five Hundred Dollars.

(4) The time price differential under this Article shall be computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; provided, however, if the regular period is other than a monthly period such time price differential shall be computed proportionately. The time price differential under this Article may be computed for all unpaid balances within a range of not in excess of Ten Dollars on the basis of the median amount within such range, if as so computed such time price differential is applied to all unpaid balances within such range. A minimum time price differential not in excess of Seventy-five Cents per month may be charged, received and collected for any billing cycle in which a balance is due. In addition, such retail charge agreement may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney, not a salaried employee of the holder of the contract, and for court costs and disbursements.

[Acts 1967, 60th Leg., p. 643, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.04. Insurance

(1) On any retail installment contract or retail charge agreement made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract or agreement and include the cost of such insurance as a separate charge in such contract or agreement. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one contract or agreement at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure property involved in such contract or agreement, made un-

der the authority of this Chapter, and include the cost of such insurance as a separate charge in such contract or agreement. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the contract or agreement, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the buyer a statement which shall clearly and conspicuously state that insurance is requested or required in connection with the contract, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder at a premium or rate of charge not fixed or approved by the State Board of Insurance, the seller or holder shall include such fact in the foregoing statement, and the buyer shall have the option for a period of five days from the date of the contract or agreement of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 6.02 or the retail charge agreement required by Article 6.03, respectively.

(4) Such insurance shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) The contract or agreement must state the kind, coverage, term and amount of premium for such insurance.

(6) The buyer shall have the privilege at the time of execution of the contract or agreement of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller or holder, but, in such case the inclusion of the insurance premium in the contract or agreement shall be optional with the seller or holder.

(7) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract or agreement, deliver, mail, or cause to be mailed to the buyer at his address as specified in the contract or agreement, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance,

the coverages and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(8) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(9) Any gain, or advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any contract or agreement made under this Chapter except as specifically provided herein.

[Acts 1967, 60th Leg., p. 645, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.05. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default in the performance of any of his obligations, or (b) the holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment, or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of goods;

(6) Provide that the buyer agrees not to assert against the seller any claim or defense arising out of the sale;

(7) Provide for or grant a first lien upon real estate to secure such obligation, except such lien as is created by law upon the recording of an abstract of judgment.

[Acts 1967, 60th Leg., p. 646, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.06. Certificate of Completion or Satisfaction Required in Certain Transactions

(1) A seller who has entered into a retail installment transaction to perform services or install goods for the modernization, rehabilitation, repair, alteration, improvement or construction of improvements on real property shall obtain a certificate of completion or certificate of satisfaction (hereinafter designated "certificate") signed by the buyer, when all such goods and/or services purchased under a retail installment contract have been performed or installed as required by such contract; and may obtain such a certificate whether or not any guarantee or warranty of the goods or services remains in force. Such certificate shall be a separate writing and shall have the following notation at the top thereof in at least ten-point bold type:

**WARNING TO BUYER—DO NOT SIGN THIS CERTIFICATE UNTIL ALL SERVICES HAVE BEEN SATISFACTORILY PERFORMED AND MATERIALS SUPPLIED OR GOODS RECEIVED AND FOUND SATISFACTORY.**

(2) Such signed certificate or a copy thereof shall be kept by the seller for a period of two years from the date of execution.

(3) No seller shall knowingly induce a buyer to sign such a certificate or knowingly take or accept from the buyer any executed certificate if performance of the services or installation of the goods required by the retail installment contract is not complete.

(4) Execution of such a certificate by a buyer shall not constitute a waiver of any guaranty or warranty made by a seller, manufacturer or supplier. Failure or refusal on the part of a buyer to execute such certificate, without good cause, shall not affect the validity of the retail installment contract.

[Acts 1967, 60th Leg., p. 646, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.07. Assignment and Negotiation

Notwithstanding the provisions of any other law, a person may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from another person on such terms and conditions and for such price as may be mutually agreed upon. Notice to the buyer of the assignment or negotiation and any requirement that the seller be deprived of dominion over payments upon a retail installment contract or retail charge agreement, or over the goods if returned to or repossessed by the seller, is not necessary to the validity of a written assignment or negotiation of the retail installment contract or retail charge agreement or any outstanding balance under either, as against creditors, subsequent purchasers, pledges, mortgagees and lien claimants of the seller. Unless the buyer has notice

of the assignment or negotiation of his retail installment contract, retail charge agreement or any outstanding balance under either, payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders. No right of action or defense of a buyer arising out of a retail installment transaction which would be cut off by negotiation, shall be cut off by negotiation of the retail installment contract or retail charge agreement to any third party unless such holder acquires the contract relying in good faith upon a certificate of completion or certificate of satisfaction, if required by the provisions of Article 6.06; and such holder gives notice of the negotiation to the buyer as provided in this Article, and within thirty days of the mailing of such notice receives no written notice from the buyer of any facts giving rise to any claim or defense of the buyer. Such notice of negotiation shall be in writing addressed to the buyer at the address shown on the contract and shall: identify the contract; state the names and addresses of the seller and buyer; describe the goods or services; state the time balance and a description of the payment schedule. The notice of negotiation shall contain the following warning to the buyer in at least ten-point bold face type:

**ARE THE TERMS OF THE CONTRACT DESCRIBED ABOVE CORRECT AND ARE YOU SATISFIED WITH THE GOODS OR SERVICES FURNISHED? IF NOT, YOU SHOULD NOTIFY US GIVING DETAILS WITHIN 30 DAYS FROM THE DATE THE ABOVE NOTICE WAS MAILED.**

[Acts 1967, 60th Leg., p. 647, ch. 274, § 2, eff. Jan. 1, 1968.]

**Art. 5069-6.08 Application**

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to retail installment transactions as defined in Article 6.01 hereof.

[Acts 1967, 60th Leg., p. 647, ch. 274, § 2, eff. Jan. 1, 1968.]

**Art. 5069-6.09. Waiver**

No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid

waiver of any of the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 648, ch. 274, § 2, eff. Jan. 1, 1968.]

**CHAPTER SEVEN. MOTOR VEHICLE INSTALLMENT SALES**

**Article**

- 5069-7.01. Definitions.
- 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts.
- 5069-7.03. Finance Charge Limitations.
- 5069-7.04. Refunds on Prepayment.
- 5069-7.05. Amendments of Retail Installment Contracts.
- 5069-7.06. Insurance.
- 5069-7.07. Prohibited Provisions.
- 5069-7.08. Assignment and Negotiation.
- 5069-7.09. Application.
- 5069-7.10. Waiver.

**Art. 5069-7.01. Definitions**

For the purposes of this Chapter, unless the context otherwise requires:

(a) "Motor Vehicle" means and is limited to any automobile, mobile home, truck, truck tractor, trailer, semi-trailer and bus designed and used primarily to transport persons or property on a public highway, excepting however, any boat trailer, any vehicle propelled or drawn exclusively by muscular power or which is designed to run only on rails or tracks or in the air, or other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

(b) "Retail Buyer" or "Buyer" means a person who agrees to buy or buys a motor vehicle other than principally for the purpose of resale, from a retail seller in a retail installment transaction.

(c) "Retail Seller" or "Seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

(d) "Retail Installment Transaction" or "Transaction" means any transaction as a result of which a retail buyer acquires a motor vehicle from a retail seller under a retail installment contract for a sum consisting of the cash sale price and other charges as limited by this Chapter and agrees with a retail seller to pay part or all of such sum in one or more deferred installments. The term shall include every transaction wherein the promise or agreement to pay the deferred balance of such sum is made by the retail buyer to the retail seller notwithstanding the existence or occurrence of any one or more of the following events:

(i) that the retail seller has arranged or arranges to sell, transfer or assign the retail buyer's obligation;

(ii) that the amount of the charges is determined by reference to charts or information furnished by a financing institution;

(iii) that the forms of instruments used to evidence the retail installment transaction are furnished by a financing institution; and

(iv) that the credit standing of the retail buyer is or has been evaluated by a financing institution.

(e) "Retail Installment Contract" or "Contract" means a contract entered into in this State evidencing a retail installment transaction. The term includes a chattel mortgage, conditional sale contract, security agreement and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the bailment or lease. The term shall also include a contract which the parties have amended in order to renew, restate or reschedule the unpaid balance thereof, or to extend or defer the scheduled due date of all or any part of any installment or installments, in which case the retail installment contract shall consist of the original contract and the amendments thereto.

(f) "Cash Sale Price" means the price stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought from the seller, the motor vehicle which is the subject matter of such contract if such sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title and license fees, and charges for delivering, servicing, repairing, altering or improving the motor vehicle.

(g) "Official Fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting and, in addition, for releasing or satisfying a retained title, lien or other security interest created in connection with a retail installment transaction.

(h) "Principal Balance" means the cash sale price of the motor vehicle plus the amounts, if any, included in the retail installment contract, if a separate identified charge is stated therein, for insurance and other benefits and official fees, less the amount of the buyer's down payment, if any, in money or goods or both.

(i) "Time Price Differential" means the total amount to be added to the principal balance to determine the balance of the buyer's indebtedness to be paid under a retail installment contract.

(j) "Holder" means the retail seller of the motor vehicle or assignee if the retail installment contract or the outstanding

balance thereunder is sold or otherwise transferred.

(k) "Time Sale Price" means the total of the cash sale price of the motor vehicle and the amount, if any, included for insurance, if a separate identified charge is made therefor, and the official fees and the time price differential.

(l) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized.

(m) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

[Acts 1967, 60th Leg., p. 648, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts

(1) Each retail installment contract shall be in writing, dated, signed by both the buyer and the seller, and completed as to all essential provisions before it is signed by the buyer; provided, however, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks or similar information and the due date of the first installment may be inserted in the contract after its execution. A retail installment contract need not be contained in a single document.

(2) The printed portion of the retail installment contract, other than instructions for completion, shall be in a size equal to at least eight-point type. Such contract shall contain substantially the following notice in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE TIME PRICE DIFFERENTIAL. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."**

(3) A retail installment contract shall also contain, in a size equal to at least ten-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.

(4) The seller shall deliver to the buyer, or mail to him at his address shown on the retail installment contract, a copy of such contract as accepted by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his contract and to receive a refund of all payments made and a return of all goods

traded in to the seller on account of or in contemplation of such contract, or if the goods traded in cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the retail installment contract shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature.

(5) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer, and a description of the motor vehicle sold or to be sold.

(6) The retail installment contract shall specifically set out the following items:

(a) The cash sale price of the motor vehicle;

(b) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in;

(c) The difference between items (a) and (b);

(d) The aggregate amount, if any, included for insurance if a separate identified charge is made therefor, specifying the type or types and the term of coverage;

(e) The aggregate amount of official fees, if a separate identified charge is made therefor;

(f) The principal balance, which is the sum of items (c), (d) and (e);

(g) The amount of the time price differential; and

(h) The sum of items (f) and (g), which is the balance to be paid by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof. If installment payments other than the final payment are stated as a series of periodic payments equal in period and amount, the number of payments and the amount and due date of each payment need not be separately stated, and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a calendar date or by reference to the date of the contract or to the time of delivery.

(i) If any installment (except the down payment) is more than double the average of all prior installments (except the down payment), the following legend printed in at least ten-point bold type or typewritten:

THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS

followed, if there be but one such larger installment, by:

AN INSTALLMENT OF \$ \_\_\_\_\_  
WILL BE DUE ON \_\_\_\_\_,

or if there be more than one such larger installment, by:

LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: \_\_\_\_\_,

in such latter case, inserting the amount of every such larger installment and of its due date.

(j) The above items need not be stated in the sequence or order set forth; additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(7) The buyer's acknowledgment, conforming to the requirements of this Article, of delivery of a copy of the retail installment contract shall be conclusive proof of such delivery, that such contract when signed by the buyer did not contain any blank spaces except as herein provided, and of compliance with this Article in any action or proceeding by or against a holder of such contract without knowledge to the contrary when he purchases it.

(8) Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for each additional statement. A buyer shall be given a written receipt for any payment when made in cash:

[Acts 1967, 60th Leg., p. 649, ch. 274, § 2, eff. Jan. 1, 1968.]

### Art. 5069-7.03. Finance Charge Limitations

(1) Notwithstanding the provisions of any other law, the time price differential in a retail installment contract payable in substantially equal successive monthly installments beginning one month after the date of the contract shall not exceed the larger of Twenty-five Dollars or an amount determined under the following schedule:

Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—Seven Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 2. Any new domestic motor vehicle not in Class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made and any used foreign motor vehicle not more than two years old—Ten Dollars per One Hundred Dollars per annum.

Class 3. Any used motor vehicle not in Class 2 and, if a domestic motor vehicle, designated by the manufacturer by a year

model not more than four years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—Twelve Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 4. Any used motor vehicle not in Class 2 or Class 3—Fifteen Dollars per One Hundred Dollars per year. Provided, however, if the principal balance is Three Hundred Dollars or less, the time price differential shall be Eighteen Dollars per One Hundred Dollars per annum.

(2) Such charge shall be computed on the principal balance as determined under Article 7.02 of this Chapter from the date of the contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(3) For a period less or greater than twelve months or for amounts less or greater than One Hundred Dollars, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of fifteen days or more may be considered a full month.

(4) If a retail installment contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in equal successive monthly installments followed by or interspersed with an irregular, unequal or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract, the charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(5) A buyer under a retail installment contract may, upon written consent of the holder, transfer his equity in the motor vehicle at any time to another person, but in that event the holder shall be entitled to a transfer of equity fee not exceeding Twenty-five Dollars.

(6) The holder of any retail installment contract may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of each installment or Five Dollars, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. Provided, that only one such delinquency charge may be collected on any installment regardless of the period during which it remains in default. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the seller or holder of the contract, and for court costs and disbursements, and in the event of repossession, sequestration, or other action necessary

to secure possession of a motor vehicle securing the payment of a retail installment contract, such contracts may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with such repossession or foreclosure, including costs of storing, reconditioning and reselling such motor vehicle, subject to the standards of good faith and commercial reasonableness set by the Uniform Commercial Code as adopted in Texas.

[Acts 1967, 60th Leg., p. 651, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.04. Refunds on Prepayment

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay it in full at any time before maturity, and if he does so, shall receive the following refund credit thereon:

On a contract payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of Twenty-five Dollars, as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment is prior to the due date of the first installment under such contract, then as of the date after such prepayment, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract. When the amount of refund credit is less than One Dollar no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above-described method, having due regard to the amount of each installment, to the irregularity of each installment period and to the provisions of Sections (2) and (4) of Article 7.03 hereof.

[Acts 1967, 60th Leg., p. 652, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.05. Amendments of Retail Installment Contracts

The holder of a retail installment contract upon request by the buyer, may agree to an amendment thereto to extend or defer the scheduled due date of all or any part of any installment or installments or to renew, restate or reschedule the unpaid balance of such contract, and may collect for same a charge not to exceed an amount computed under either of the following:

(a) If all or any part of any installment or installments is deferred for not more than three months the holder may at his



election charge and collect on the amount deferred for the period deferred a charge computed at a rate which will not exceed the same effective return as is permitted on monthly payment contracts under Article 7.03; provided that the minimum charge shall be One Dollar. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance coverages provided for in the contract and any additional necessary official fees.

(b) In any other extension, renewal, re-statement or rescheduling of the unpaid balance, the charge may be computed as follows: The sum of the unpaid balance as of the date of amendment and the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting the prepayment refund credit required by Article 7.04, shall constitute a principal balance on which the charge may be computed for the term of the amended contract at the applicable time price differential provided in Article 7.03 after reclassifying the motor vehicle by its year model at the time of the amendment. The provisions of this Chapter relating to minimum charges under Article 7.03 and acquisition costs under the refund schedule in Article 7.04 shall not apply in calculating the principal balance of the amended contract. The amendment to the contract must be confirmed in a writing signed by the buyer. The writing shall set forth the terms of the amendment and the new due dates and amounts of the installments; a copy thereof shall either be delivered to the buyer or mailed to him at his address as shown on the contract. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[Acts 1967, 60th Leg., p. 652, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.06. Insurance

(1) On any retail installment contract made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract, and include the cost of such insurance as a separate charge in such contract. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one loan contract at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure tangible personal property involved in such a contract, made under authority of this Chapter, and include the cost of such insurance as a separate charge in such contract. Such insurance and

the premiums or charges therefrom shall bear a reasonable relationship to the amount, term and conditions of the contract, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is requested or required in connection with the contract, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder at a premium or rate of charge not fixed or approved by the State Board of Insurance, the seller or holder shall include such fact in the foregoing statement, and the buyer shall have the option for a period of five days from the date of the contract or agreement of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 7.02.

(4) Such insurance shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) The contract or agreement must state the kind, coverage, term and amount of premium for such insurance.

(6) If dual interest insurance on the motor vehicle is purchased by the seller or seller's assignee, as the case may be, it shall within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy, or policies, or certificates of insurance written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance. The buyer shall have the privilege at the time of execution of the contract of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

(7) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the

seller or the holder shall be credited to the final maturing installments of the retail installment contract, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(8) The retail installment contract shall clearly and conspicuously disclose whether or not bodily injury and property damage liability insurance is provided pursuant thereto.

(9) Any gain, advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any retail installment contract made under this Chapter except as specifically provided herein.

[Acts 1967, 60th Leg., p. 653, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.07. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the seller or holder may accelerate the maturity of any part or all of the amount owing thereunder unless

(a) the buyer is in default on the performance of any of his obligations or

(b) the seller or holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment in this State or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of a motor vehicle;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of a motor vehicle;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of a motor vehicle;

(6) Provide that the buyer agrees not to assert against the seller or holder of any claim or defense arising out of the sale.

[Acts 1967, 60th Leg., p. 654, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.08. Assignment and Negotiation

(1) Any person may purchase or acquire or agree to purchase or acquire any retail installment contract or any outstanding balance from

any other person on such terms and conditions and for such price as may be mutually agreed upon;

(2) Notice to the buyer of the assignment or negotiation and any requirement that the seller be deprived of dominion over payments upon a retail installment contract, or over the motor vehicle if returned to or repossessed by the seller, is not necessary to the validity of a written assignment or negotiation of the retail installment contract or any outstanding balance as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller;

(3) Unless the buyer has notice of the assignment or negotiation of his retail installment contract, or any outstanding balance thereunder payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders;

(4) No right of action or defense of a buyer arising out of a retail installment sale which would be cut off by negotiation, shall be cut off by negotiation of the contract to any third party unless such holder acquires the contract in good faith and for value and gives notice of the negotiation to the buyer as provided in this Article, and within thirty days of the mailing of such notice receives no written notice of any facts giving rise to any claim or defense of the buyer. A notice of negotiation shall be in writing addressed to the buyer at the address shown on the contract and shall identify the contract, state the names of the seller and buyer; describe the motor vehicle; state the time balance and the number and amounts of the installments. The notice of negotiation shall contain the following warning to the buyer in ten-point bold face type:

**IF YOU HAVE ANY COMPLAINT OR OBJECTION REGARDING THE GOODS OR SERVICES COVERED BY THE CONTRACT IDENTIFIED IN THIS NOTICE, OR ANY CLAIM OR DEFENSE RELATING TO SUCH CONTRACT, YOU MUST NOTIFY US WITHIN 30 DAYS FROM THE DATE THIS NOTICE WAS MAILED.**

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-7.09. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to, or governing retail installment sales not otherwise subject hereto. This Chapter shall apply

exclusively to all retail installment transactions as defined in Article 7.01.

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968.]

**Art. 5069-7.10. Waiver**

No act or agreement of the buyer before, or at the time of the making of a retail installment contract, or purchase thereunder, shall constitute a valid waiver of any of the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968.]

**CHAPTER EIGHT. PENALTIES**

**Article**

- 5069-8.01. Contracting for, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized.
- 5069-8.02. Contracting for, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized.
- 5069-8.03. Engaging in Lending Business Without License.
- 5069-8.04. Actions; Limitations and Venue.
- 5069-8.05. Violating Terms of Injunction.
- 5069-8.06. Denial of Credit to Individuals.

**Art. 5069-8.01. Contracting for, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized**

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, or by failing to perform any duty specifically imposed on him by any provision of this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court, provided that there shall be no penalty for a violation which results from an accidental and bona fide error.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-8.02. Contracting for, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized**

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are in the aggregate in excess of double the total amount of interest, time price differential and other charge authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, and all other charges, and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than

One Thousand Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-8.03. Engaging in Lending Business Without License**

In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapters 3, 4, or 5 of this Subtitle without first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorney fees incurred by the obligor.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-8.04. Actions; Limitations and Venue**

All such actions brought under this Subtitle, except where otherwise specifically provided in this Subtitle, shall be brought in any court of this State having jurisdiction thereof within four years from the date of loan, retail installment transaction or two years from the date of the final entry made thereon, whichever is later, in the county of defendant's residence, or in the county where the interest, time price differential or other charge in excess of the amount authorized by this Subtitle shall have been received or collected, or where such transaction has been entered into or where the parties who paid the interest, time price differential or other charge in excess of the amount authorized in this Subtitle resided when such transaction occurred, or where he resides.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-8.05. Violating Terms of Injunction**

Any person who violates the terms of an injunction duly issued under this Subtitle shall forfeit and pay to the State a civil penalty of not more than One Thousand Dollars per violation. For the purposes of this Article, the District Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General may petition for recovery of such civil penalties.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-8.06. Denial of Credit to Individuals**

(a) Any person who violates the terms of Article 2.07 of this Title is liable to the aggrieved individual for the actual damages caused by the denial, or for \$50.00, whichever is greater, and court costs.

(b) In addition to the liabilities prescribed in Subsection (a) of this section, any licensee under this Subtitle who violates Article 2.07 of this Subtitle is subject to revocation or suspension of his license.

[Acts 1973, 63rd Leg., p. 1293, ch. 483, § 2, eff. Aug. 27, 1973.]

### SUBTITLE THREE—CONSUMER PROTECTION

Chapter	Article
9. Consumer Debt Counseling and Education	5069-9.01
10. Deceptive Trade Practices [Repealed]	5069-10.01
11. Debt Collection	5069-11.01
12. Financing of Insurance Premiums	5069-12.01
13. Home Solicitation Transactions	5069-13.01
14 to 49. [Reserved for expansion]	
50. Miscellaneous Provisions	5069-50.01
51. Pawnshops	5069-51.01

#### CHAPTER NINE. CONSUMER DEBT COUNSELING AND EDUCATION

##### Article

- 5069-9.01. Duties of the Commissioner.  
 5069-9.02. Debt Pooling.  
 5069-9.03. Exemption.  
 5069-9.04. Penalty.

#### Art. 5069-9.01. Duties of the Commissioner

(1) The Consumer Credit Commissioner shall provide advice, assistance and counsel to encourage the establishment and operation of voluntary non-profit debt counseling services for the citizens of this State.

(2) The Consumer Credit Commissioner shall provide advice, assistance and counsel to coordinate, encourage, aid and assist public and private agencies, organizations and groups and consumer credit institutions in the development and operation of voluntary education programs designed to promote the prudent and beneficial use of consumer credit by the citizens of this State.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-9.02. Debt Pooling

(1) Except as provided in Article 9.03 nothing herein shall be construed to permit any debt pooling contracts wherein a contract is entered into by any person with a debtor by the terms of which contract the debtor agrees to deposit periodically or otherwise with such person a specified sum of money and said person agrees to distribute said sums of money among creditors of the debtor, for which service the debtor agrees to pay a valuable consideration.

(2) Any such contract as described herein shall be void and of no effect.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-9.03. Exemption

The provisions of Article 9.02 shall not apply to:

(a) Any bank, savings and loan association, trust company or credit union doing business under the laws of this State or of the United States;

(b) Any attorney at law;

(c) Any judicial officer or other person acting under the orders of a court of this State or of the United States;

(d) Any agency, instrumentality or subdivision of this State or of the United States;

(e) Any retail merchants association or non-profit trade association formed for the purpose of collecting accounts and exchanging credit information; and

(f) Any non-profit organization providing debt-counseling services to citizens of this State.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-9.04. Penalty

Any person violating Article 9.02 shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred Dollars nor more than Five Hundred Dollars for each conviction. Each act of debt pooling as defined in Article 9.02 shall constitute a separate offense.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

#### CHAPTER TEN. DECEPTIVE TRADE PRACTICES [REPEALED]

#### Arts. 5069-10.01 to 5069-10.08. Repealed by Acts 1973, 63rd Leg., p. 342, ch. 143, § 3, eff. May 21, 1973

Chapter 10, Deceptive Trade Practices, consisting of articles 5069-10.01 to 5069-10.05, was enacted by Acts 1967, 60th Leg., p. 609, ch. 274, § 2, effective October 1, 1967, and was subsequently amended by Acts 1969, 61st Leg., p. 1504, ch. 452, § 1, to consist of articles 5069-10.01 to 5069-10.08, effective June 10, 1969.

Prior to repeal, article 5069-10.01 was amended by Acts 1971, 62nd Leg., p. 3056, ch. 1016, § 1; Acts 1971, 62nd Leg., p. 3059, ch. 1018, § 1 and articles 5069-10.04 to 5069-10.07 were amended by Acts 1971, 62nd Leg., p. 2380, ch. 739, § 2.

See, now, Business and Commerce Code, § 17.41 et seq.

#### CHAPTER ELEVEN. DEBT COLLECTION

##### Article

- 5069-11.01. Definitions.  
 5069-11.02. Threats or Coercion.  
 5069-11.03. Harassment; Abuse.  
 5069-11.04. Unfair or Unconscionable Means.  
 5069-11.05. Fraudulent, Deceptive, or Misleading Representations.  
 5069-11.06. Deceptive Use of Credit Bureau Name.  
 5069-11.07. Use of Independent Debt Collectors.  
 5069-11.08. Bona Fide Error.  
 5069-11.09. Penalties.  
 5069-11.10. Civil Remedies.  
 5069-11.11. Other Remedies.

**Art. 5069-11.01. Definitions**

As used in this subchapter:

(a) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

(b) "Debt collection" means any action, conduct, or practice in soliciting debts for collection or in collecting debts owed or due, or alleged to be owed or due a creditor by a consumer.

(c) "Debt collector" means any person engaging directly or indirectly in debt collection, as defined herein, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect debts.

(d) "Consumer" means an individual who owes or allegedly owes a debt created primarily for personal, family, or household purposes.

(e) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(f) "Creditor" means a party to a consumer transaction other than a consumer.

(g) "Person" means individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 1, eff. Aug. 27, 1973.]

**Art. 5069-11.02. Threats or Coercion**

No debt collector may collect or attempt to collect any debt alleged to be due and owing by any threats, coercion, or attempts to coerce which employ any of the following practices:

(a) using or threatening to use violence or other criminal means to cause harm to the person or property of any person;

(b) accusing falsely or threatening to accuse falsely any person of fraud or any other crime;

(c) representing or threatening to represent to a third party or any other person, that a consumer is willfully refusing to pay a non-disputed debt when the debt is in dispute for any reason and the consumer has notified such debt collector in writing of the dispute;

(d) threatening to sell or assign to another the obligation of the consumer with an attending false representation that the result of such sale or assignment would be that the consumer would lose any defense to the alleged debt or would be subject to illegal collection attempts;

(e) threatening that the debtor will be arrested for nonpayment of an alleged debt without proper court proceedings; however, nothing herein shall prevent a debt collector from informing the debtor that the debtor may be arrested after proper court proceedings in cases where the

debtor has violated the criminal laws of this state;

(f) threatening to file charges, complaints, or criminal action against a debtor when in fact the debtor has not violated any criminal laws; provided, however, nothing herein shall prevent a debt collector from threatening to institute civil lawsuits or other judicial proceedings to collect a debt;

(g) threatening that nonpayment of an alleged debt will result in the seizure, repossession, or sale of any property of that person without proper court proceedings; however, nothing herein shall prevent a debt collector from exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale which does not require court proceedings; or

(h) threatening to take any action prohibited by law.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 2, eff. Aug. 27, 1973.]

**Art. 5069-11.03. Harassment; Abuse**

In connection with the collection of or attempt to collect any debt alleged to be due and owing by a consumer, no debt collector may oppress, harass, or abuse any person by methods which employ the following practices:

(a) using profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) placing telephone calls without disclosure of the name of the individual making the call, and with the willful intent to annoy or harass or threaten any person at the called number;

(c) causing expense to any person in the form of long distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, without first disclosing the name of the person making the telephone call or transmitting the communication; or

(d) causing a telephone to ring repeatedly or continuously or making repeated and continuous telephone calls, with the willful intent to harass any person at the called number.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 3, eff. Aug. 27, 1973.]

**Art. 5069-11.04. Unfair or Unconscionable Means**

No debt collector may collect or attempt to collect any debt by unfair or unconscionable means employing the following practices:

(a) seeking or obtaining any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the obligation was not in fact incurred for such necessities; or

(b) collecting or attempting to collect any interest or other charge, fee, or expense incidental to the obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer. However, creditors may charge reasonable reinstatement fees as consideration for renewal of a real estate loan or contract of sale, after default, if the additional fees are included in a written contract executed at the time of renewal.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 4, eff. Aug. 27, 1973.]

#### Art. 5069-11.05. Fraudulent, Deceptive, or Misleading Representations

No debt collector may collect or attempt to collect debts or obtain information concerning a consumer by any fraudulent, deceptive, or misleading representations which employ the following practices:

(a) using any name while engaged in the collection of debts other than the true business or professional name or the true personal or legal name of the debt collector; or failing to maintain a list of all business or professional names known to be used or formerly used by individual persons collecting debts or attempting to collect debts for the debt collector;

(b) falsely representing that the debt collector has information in his possession or something of value for the consumer in order to solicit or discover information about the consumer;

(c) failing to clearly disclose, in any communication with the debtor, the name of the person to whom the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans);

(d) failing to clearly disclose, in any communication with the debtor, that the debt collector is attempting to collect a debt, unless such communication is for the purpose of discovering the whereabouts of the debtor;

(e) using any written communication which fails to clearly indicate the name of the debt collector and the debt collector's street address, when the written notice refers to an alleged delinquent debt; (the foregoing shall not require disclosure of names and addresses of employees of debt collectors);

(f) using any written communication which demands a response to a place other than the debt collector's or creditor's street address or post office box; (the foregoing shall not require response to the address of an employee of a debt collector);

(g) misrepresenting the character, extent, or amount of a debt against a consumer, or misrepresenting its status in any judicial or governmental proceedings;

(h) falsely representing that any debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of this state or any agency of federal, state, or local government;

(i) using, distributing, or selling any written communication which simulates or falsely represents to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other legally constituted or authorized governmental authority, or which creates a false impression about its source, authorization, or approval; or using any seal or insignia or design which simulates that of any governmental agency;

(j) representing that a debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when there is no written contract or statute authorizing such additional fees or charges;

(k) representing that a debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when the award of such fee or charge is discretionary by a court of law;

(l) falsely representing the status or true nature of the services rendered by the debt collector or his business;

(m) using any written communication which violates or fails to conform to the United States postal laws and regulations;

(n) using any communication which purports to be from any attorney or law firm, when in fact it is not;

(o) representing that a debt is being collected by an attorney when it is not; or

(p) representing that a debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person to whom the debt is owed; however, nothing herein shall prohibit a creditor from owning or operating its own bona fide debt collection agency.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 5, eff. Aug. 27, 1973.]

#### Art. 5069-11.06. Deceptive Use of Credit Bureau Name

No person shall use the term "credit bureau," "retail merchants," or "retail merchants association" in his business or trade name unless such person is in fact engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and other similar information re-

garding individuals, firms, corporations and any other legal entity being considered for credit extension so that a prospective creditor may be able to make a sound decision in the extension of credit. This paragraph shall not apply to any nonprofit retail trade association consisting of individual members and qualifying as a bona fide business league as defined by the United States Internal Revenue Service, and which nonprofit retail trade association does not engage in the business of debt collection or credit reporting.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 6, eff. Aug. 27, 1973.]

#### Art. 5069-11.07. Use of Independent Debt Collectors

No creditor may use any independent debt collector who repeatedly and continuously engages in acts or practices which are prohibited by this Act after the creditor has actual knowledge that an independent debt collector is in fact repeatedly and continuously engaging in such acts or practices.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 7, eff. Aug. 27, 1973.]

#### Art. 5069-11.08. Bona Fide Error

No person shall be guilty of a violation of this Act if the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 8, eff. Aug. 27, 1973.]

#### Art. 5069-11.09. Penalties

Any person who violates a provision of this Act is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 for each violation. Such misdemeanor charge must be filed within one year of the date of the alleged violation.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 9, eff. Aug. 27, 1973.]

#### Art. 5069-11.10. Civil Remedies

Any person may seek injunctive relief to prevent or restrain a violation of this Act and any person may maintain an action for actual damages sustained as a result of a violation of this Act. A person who successfully maintains such action shall be awarded attorneys' fees reasonable in relation to the amount of work expended and costs. On a finding by the court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorneys' fees reasonable in relation to the work expended and costs.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 10, eff. Aug. 27, 1973.]

#### Art. 5069-11.11. Other Remedies

None of the provisions of this Act shall affect or alter any remedies at law or in equity

otherwise available to debtors, creditors, governmental entities, or any other legal entity. [Acts 1973, 63rd Leg., p. 1513, ch. 547, § 11, eff. Aug. 27, 1973.]

### CHAPTER TWELVE. FINANCING OF INSURANCE PREMIUMS

#### Article

- 5069-12.01. Definitions.
- 5069-12.02. License, Offices.
- 5069-12.03. License Application—Fees—Action by Commissioner.
- 5069-12.04. License Provisions—Posting—Change of Location—Other Business.
- 5069-12.05. Grounds for Revocation of License—Procedure.
- 5069-12.06. Investigations and Examinations.
- 5069-12.07. Hearings and Investigations—Subpoena Power.
- 5069-12.08. Violations.
- 5069-12.09. Regulations.
- 5069-12.10. Licensee's Books and Records.
- 5069-12.11. Written Premium Finance Agreement.
- 5069-12.12. Application of Truth-in-Lending Act.
- 5069-12.13. Deceptive Advertising.
- 5069-12.14. Rebate of Finance Charge—Filing of Premium Finance Agreement.
- 5069-12.15. Service Charges; Limitation of Charges; Computation.
- 5069-12.16. Prepayment—Refund.
- 5069-12.17. Default and Cancellation—Right to Cancel—Refund.
- 5069-12.18. Assignments.
- 5069-12.19. Restrictions on Premium Finance Agreements.

#### Art. 5069-12.01. Definitions

In this chapter unless the context otherwise requires, the following words shall have the following meanings:

(a) "Insurance Premium Finance Company"—means (1) a person engaged in whole or in part in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds, except that the preparation and delivery of a premium finance agreement or disclosure statement required by Article 12.11(5) by an insurance agent on behalf of the insured shall not constitute doing business as an insurance premium finance company, or (2) a person engaged in whole or in part in the business of acquiring premium finance agreements from insurance agents or brokers or other premium finance companies, or (3) an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds payable to him or his order.

(b) "Premium finance agreement"—means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premium on an insurance contract.

(c) "Commissioner"—means the Consumer Credit Commissioner of the State of Texas.

(d) "Licensee"—means an insurance premium finance company holding a license issued by the commissioner under this chapter.

(e) "Annual percentage rate"—means the annual percentage rate of finance charge as determined in accordance with the provisions of Consumer Credit Protection Act of 1970<sup>1</sup> and Regulation Z, promulgated pursuant thereto.

(f) "Insured"—means a person who enters into a premium finance agreement with an insurance premium finance company.

(g) "Insurance Agent" and "Insurance Broker"—mean respectively an insurance agent or insurance broker duly licensed as such under the insurance laws of the State of Texas or any other state.

(h) "Person"—means an individual, partnership, corporation, joint venture, trust, association or any other legal entity, however organized.

[Acts 1973, 63rd Leg., p. 176, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

Section 2 of the 1973 Act provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 5069-12.02. License, Offices

(1) On or after the effective date of this Act, no person shall, without first obtaining a license from the Consumer Credit Commissioner as provided in Subsection (3) of Article 12.03 of this chapter, negotiate, transact or engage in the business of insurance premium financing in Texas, and contract for, charge or receive, directly, or indirectly, on or in connection with any such insurance premium financing, any charges, whether for interest, compensation, consideration or expense or other thing or otherwise, which in the aggregate are greater than such person would be permitted by law to charge if he were not a licensee under this chapter. Such license shall allow the holder to maintain only one office from which said business may be conducted. The Consumer Credit Commissioner may issue more than one license but not more than 60 licenses to any one person on compliance with this chapter as to each license.

(2) Any bank or savings and loan association doing business under the laws of this State or of the United States shall receive a license upon notification to the Consumer Credit Commissioner of its intention to operate under the provisions of this chapter. The Consumer Credit Commissioner shall forthwith issue a license to any such bank or savings and loan association.

[Acts 1973, 63rd Leg., p. 177, ch. 86, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-12.03. License Application—Fees—Action by Commissioner

(1) Each application for a license to engage in the business of insurance premium financing shall be in writing and in the form prescribed by the commissioner, and shall be accompanied by an investigation fee of \$200.

(2) The commissioner shall, within 90 days after receipt of any such application, notify the applicant (a) that such license has been approved and will be issued upon payment of the appropriate license fee or (b) that his application for such license has been denied. The commissioner may refuse to issue a license if he finds that the financial responsibility, experience, character or general fitness of the applicant or any person associated with the applicant are not such as to command the confidence of the community and to warrant the belief that the business will be conducted honestly, fairly and efficiently or that the applicant does not have available for the operation of such business net assets of at least \$25,000.

(3) After approval and upon receipt of the license fee the commissioner shall execute the license to engage in the business of a premium finance company at the location specified in the application and shall transmit said license to the applicant.

(4) The refusal of the commissioner to issue a license shall not entitle the applicant to a return of any part of the investigation fee which accompanied his application.

(5) The fee for each license shall be \$100. Each license shall be issued for the calendar year and shall remain in full force and effect until the 31st day of December, unless suspended, revoked or surrendered in accordance with the provisions of Article 12.05. Provided, however, if a license is granted after June 30th in any year, such fee shall be \$50 for that year.

(6) Provided, however, any person holding a license under Chapter 3 of Title 79, Revised Civil Statutes of Texas, 1925,<sup>1</sup> as of the effective date of this chapter shall only be required to pay the license fee required hereinabove and shall not be required to pay the investigation fee set forth in Article 12.03(1).

[Acts 1973, 63rd Leg., p. 177, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 5069-3.01 et seq.

#### Art. 5069-12.04. License Provisions—Posting—Change of Location—Other Business

(1) Such license shall state the name and address of the licensee. Such license shall be conspicuously posted in the specified office of the licensee and shall not be transferable, except as hereinafter provided, or assignable. Before any licensee changes such office from one location to another he shall give written notice thereof to the commissioner who, if he approves said change, shall issue an endorsement indicating the change and the date thereof, which endorsement shall be attached to the license for such office and shall constitute the



authority for the operation of the business under such license at such new location.

(2) A licensee may conduct the business of premium financing under this chapter within any offices, suite, room or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless the commissioner shall find, after a hearing, that the conduct by the licensee of such other business in the particular licensed office has concealed evasions of this chapter and shall order such licensee, in writing, to desist from such conduct in such office.

(3) No licensee shall conduct the business of premium financing provided for by this chapter under any name, or at any place of business other than that stated in the license, except that the preparation and delivery of a premium finance agreement by an insurance agent on behalf of the insured shall not constitute doing business as an insurance premium finance company as defined in Article 12.01(a) of this chapter, unless said agreements are held for the benefit of the agent in accordance with Article 12.01(a)(3).

(4) Nothing in this chapter shall be construed to limit the premium financing of any licensee to residents of the community in which the licensed office is situated or to prohibit the licensee from conducting premium financing by mail.

[Acts 1973, 63rd Leg., p. 178, ch. 86, § 1, eff. Aug. 27, 1973.]

**Art. 5069-12.05. Grounds for Revocation of License—Procedure**

(1) The commissioner may after notice and hearing forthwith revoke or suspend any license issued under this chapter if he finds that:

(a) the licensee has violated any provision of this chapter or any rule or regulation lawfully made thereunder by the commissioner;

(b) the existence of any fact or condition which, if it had existed at the time of the original application for such license, clearly would have warranted the commissioner in refusing to issue such license.

(2) The commissioner shall after notice and hearing have sufficient cause to suspend or revoke a license whenever he learns from the Commissioner of Insurance or from any other source that the licensee has failed to return all amounts due from the insurance premium finance company to the person whose insurance policy has been canceled as required by Article 12.17(7) herein.

(3) Any licensee may surrender any license by delivering to the commissioner written notice that he thereby surrenders such license, but such surrender shall not affect the licensee's civil or criminal liability, if any, for acts committed prior to such surrender.

(4) A revocation or suspension or surrender of any license shall not impair or affect the obligation of an insured under any lawful premium finance agreement previously acquired or held by the licensee.

(5) Whenever the commissioner revokes or suspends a license, he shall forthwith execute in duplicate a written order to that effect, and shall file one copy of such order in the office of the secretary of state and mail one copy to the licensee.

(6) The Consumer Credit Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Consumer Credit Commissioner in refusing originally to issue such license under this chapter.

[Acts 1973, 63rd Leg., p. 179, ch. 86, § 1, eff. Aug. 27, 1973.]

**Art. 5069-12.06. Investigations and Examinations**

(1) The commissioner may make such investigations as he deems necessary to determine whether any licensee or any other person has violated any of the provisions of this chapter, or whether any licensee has so conducted himself as to justify the revocation of his license, and the commissioner may require the attendance of and examine under oath any person and shall have the power to compel the production of all relevant books, records, accounts and documents.

(2) Each licensee shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense.

(3) All reports of investigations and all correspondence and memoranda concerning or arising out of such investigations including any duly authenticated copy or copies thereof in the possession of any licensee or the Office of Consumer Credit Commissioner shall be confidential communications and shall not be subject to subpoena and shall not be made public, except in connection with hearing under Article 12.05 and any appearance in connection therewith. Provided, however, that information obtained in the course of such examinations or investigations may be made available to other governmental agencies when the information involves matters within the scope or jurisdiction of such agencies.

[Acts 1973, 63rd Leg., p. 179, ch. 86, § 1, eff. Aug. 27, 1973.]

**Art. 5069-12.07. Hearings and Investigations—Subpoena Power**

In conducting any hearing or investigation pursuant to the provisions of this chapter, the commissioner, or any person duly designated by him, shall have the power at all times to subpoena witnesses, to take depositions of wit-

nesses residing without the state, in the manner provided for in civil actions in district courts; to pay such witnesses the fees and mileage for their attendance provided for witnesses in civil actions in district courts; and to administer oaths.

[Acts 1973, 63rd Leg., p. 179, ch. 86, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-12.08. Violations

(1) Whoever engages in the operation of a premium finance company without first obtaining a license or who violates any provision of this chapter, or knowingly makes any incorrect statement of a material fact in any application, report or statement filed pursuant to this chapter, or knowingly omits to state any material fact necessary to give the commissioner any information lawfully required by him or refuses to permit any lawful investigation or examination, shall be punished by a fine of not more than \$500 or by imprisonment for not more than six months, or both.

(2) A premium finance company's taking or receiving from or charging an insured a greater charge than authorized in this chapter shall not invalidate the premium finance agreement or the principal balance payable thereunder but may be adjudged a forfeiture of all charges which the premium finance agreement carries with it or which have been agreed to be paid thereon, and if a greater charge has been paid by an insured, the person paying the same or his legal representative may recover from the premium finance agency twice the entire amount of the charges thus paid if action is brought within two years from the time of such payment.

[Acts 1973, 63rd Leg., p. 180, ch. 86, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-12.09. Regulations

The commissioner may prescribe from time to time such rules and regulations as may be necessary or proper in carrying out the provisions of this chapter. Such rules and regulations may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the commissioner are necessary or proper to carry out the purposes of this chapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith; provided, however, that no such rule or regulation shall contain any classification, differentiation or other provision with respect to, or provide for any adjustment or exception for, any class of transaction which would result in less stringent disclosure requirements than afforded that class of transaction under the Federal Consumer Credit Protection Act of 1970<sup>1</sup> and those applicable portions of Regulation Z.

[Acts 1973, 63rd Leg., p. 180, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

#### Art. 5069-12.10. Licensee's Books and Records

(1) The licensee shall keep and use such books, accounts and records as will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts and records, including cards used in a card system, if any, for at least two years after making the final entry in respect to any premium finance agreement recorded therein.

(2) Each licensee shall annually on or before the first day of April file a report with the commissioner, giving such information as the commissioner may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state.

[Acts 1973, 63rd Leg., p. 180, ch. 86, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-12.11. Written Premium Finance Agreement

(1) A premium finance agreement shall be in writing on a form approved by the commissioner.

(2) Such agreement shall:

(a) be dated and signed by the insured, however, if the agreement contains policies for other than personal, family or household purposes, the premiums for which exceed \$1,000, it may be signed on behalf of the insured, by his agent,

(b) contain the name and address of business of the insurance agent or insurance broker negotiating the related insurance contract, the name and residence or business address of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, a description of the insurance contract involved and the amount of the premium therefor,

(c) the total amount of the premiums,

(d) the amount of the down payment,

(e) the principal balance (difference between items (3) and (4)),

(f) the total amount of the finance charge, with description of each amount included, using the term "finance charge,"

(g) the balance payable by the insured (sum of items (5) and (6)).

(3) The premium finance agreement shall, in addition, contain the following items as applicable:

(a) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate."

(b) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(c) the amount, or method of computing the amount, or any default, delinquency, payable in the event of late payments.

(d) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

(4) The disclosures required to be given shall be made clearly, conspicuously and in meaningful sequence. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this chapter. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, 75/1,000 inch computer type, or elite size typewritten numerals or shall be legibly handwritten.

(5) It shall be a violation of this Act for any licensee to take an insurance premium finance agreement which has not been fully completed and executed at the time the insurance premium finance agreement is executed and the insurance agent shall be responsible for the completion of the insurance premium finance agreement and delivering to the insured any and all disclosure statements which are required by any existing law.

(6) If, in a premium finance agreement, changes in an insured's policy due to amending of the rate classification, by endorsement or otherwise, result in an increased principal balance and the amount under such previous contract has not been fully paid, the subsequent increase may, at the insured's option, be included in and consolidated with such previous contract, if so provided in the premium finance agreement.

(7) Such additions may be accomplished by a memorandum of agreement between the agent and the insured, provided the following information is given to the insured, in writing, prior to the first scheduled payment date of the amended transaction:

- (a) the amount of the premium increase,
- (b) down payment on increase,
- (c) principal amount of increase,
- (d) total amount of finance charge on increase,
- (e) total of additional balance due,
- (f) outstanding balance of original agreement,
- (g) consolidated agreement balance,
- (h) annual percentage rate of finance charge on additional balance due,
- (i) revised schedule of payments,
- (j) the amount or method of computing the amount of any default, deferment or similar charges authorized in Chapter 3 (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), Title 79, Revised Civil

Statutes of Texas,<sup>1</sup> payable in the event of late payments,

(k) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

[Acts 1973, 63rd Leg., p. 181, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 5069-3.01 et seq.

**Art. 5069-12.12. Application of Truth-in-Lending Act**

A transaction, although subject to this chapter shall also be subject to the provisions of Consumer Credit Protection Act of 1970<sup>1</sup> and those applicable portions of Regulation Z, adopted thereunder and in the case of conflict between the provisions of this chapter and said federal law, the provisions of the federal law shall control.

[Acts 1973, 63rd Leg., p. 182, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

**Art. 5069-12.13. Deceptive Advertising**

No licensee shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any premium finance agreement. If rates or charges are stated in advertising they shall be expressed in terms of a simple annual percentage rate as defined by federal law.

[Acts 1973, 63rd Leg., p. 182, ch. 86, § 1, eff. Aug. 27, 1973.]

**Art. 5069-12.14. Rebate of Finance Charge—Filing of Premium Finance Agreement**

(1) No premium finance company, and no employee of such a company shall pay, allow or offer to pay or allow in any manner whatsoever to an insurance agent or broker or any employee of an insurance agent or broker, or to any other person, any consideration or compensation whatsoever, either from the charge for financing specified in the premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly to an insurance agent or broker or any employee of an insurance agent or broker, other than an article of merchandise not exceeding one dollar in value which shall have thereon the advertisement of the premium finance company, except that nothing herein shall prevent payments by a premium finance company under contractual arrangements with a validly organized and operating association of insurance agents or a subsidiary of same so long as no part of any funds received under such agreement are distributed to any insurance agent, or broker, or employee of any insurance agent or broker or inure directly to the benefit of any member of such association or employee of such member. All such contractual agreements shall be in writing and shall not be valid until approval of the commissioner has been received; and

(2) A filing of a premium finance agreement or a financing statement shall not be necessary to perfect the validity of such an agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns of the insured, or any other party whomsoever.

[Acts 1973, 63rd Leg., p. 182, ch. 86, § 1, eff. Aug. 27, 1973.]

#### Art. 5069-12.15. Service Charges; Limitation of Charges; Computation

A premium finance company shall not take or receive from an insured a greater rate of charge than is provided by Chapters 3 and 4 of Article 5069 et seq., Vernon's Texas Civil Statutes, Title 79, Revised Statutes of Texas, 1925,<sup>1</sup> which charges shall commence as of the date from which the insurance company requires payment of the premium and payment was made to the insurance company for the financed policy, or the effective date of the policy, whichever is earlier. The finance charge shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement. On insurance premium finance agreements made under this chapter, no insurance charges or any other charge or fee, except those authorized herein, shall be permitted.

[Acts 1973, 63rd Leg., p. 183, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Articles 5069-3.01 et seq., 5069-4.01 et seq.

#### Art. 5069-12.16. Prepayment—Refund

Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance thereof, and if he does so and the agreement included an amount for a charge he shall receive and be entitled to receive for such prepayment, either by cash or by renewal, a refund credit thereon in accordance with the provisions for refunds contained in Article 3.15(6) of Article 5069 et seq., Vernon's Texas Civil Statutes<sup>1</sup> and the regulations issued thereunder. Where the amount of the credit for anticipation of payments is less than one dollar, no refund need be made.

[Acts 1973, 63rd Leg., p. 183, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 5069-3.15(6).

#### Art. 5069-12.17. Default and Cancellation—Right to Cancel—Refund

(1) A premium finance agreement may provide for the payment by the insured of a default charge as provided in Article 3.15(5) of Article 5069 et seq., Vernon's Texas Civil Statutes<sup>1</sup> and the Insurance Code of Texas, and the regulations issued thereunder.

(2) A premium finance agreement may contain a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement; the

insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(3) In the event the insured fails to make the payments at the time and in the amount provided in the premium finance agreement, the premium finance company shall mail to the insured a written notice of the intent of the premium finance company to cancel the insurance contract because of the default in payments by the insured unless the default in payments is cured within a time certain stated in said notice, which time shall not be less than ten (10) days from the date of mailing said written notice. A copy of said notice shall also be sent to the insurance agent or insurance broker indicated on the premium finance agreements.

(4) After expiration of such ten (10) day period, the premium finance company may thereafter cancel such insurance contract or contracts by mailing to the insurer a notice of cancellation and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

(5) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation.

(6) Whenever a financed insurance contract is canceled, the insurer shall return whatever unearned premiums are due under the insurance contract to the premium finance company, either directly or via the agent or agency writing the insurance, where an assignment of such funds is included in the premium finance agreement for the account of the insured or insureds, and

(7) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured, provided that no such refund shall be required if it amounts to less than one dollar (\$1).

[Acts 1973, 63rd Leg., p. 183, ch. 86, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Article 5069-3.15(5).

**Art. 5069-12.18. Assignments**

Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment thereunder by him to the last known holder of the agreement shall be binding upon all subsequent holders or assignees.

[Acts 1973, 63rd Leg., p. 184, ch. 86, § 1, eff. Aug. 27, 1973.]

**Art. 5069-12.19. Restrictions on Premium Finance Agreements**

No premium finance agreement shall contain any provision whereby:

(1) In the absence of default of the insured, the premium finance company holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder; reasonable cause shall, without limitation, include a proceeding in bankruptcy, receivership, or insolvency being instituted by or against the insured, or the insolvency of, suspension of business, or cessation of the right to conduct business by an insurance company writing policies that are financed for the insured under the premium finance agreement; or

(2) No licensee shall take any instrument whereby borrower waives any right accruing to him under the provisions of this chapter;

(3) No licensee shall take any instrument which has not been fully completed and executed by the insured;

(4) No licensee shall induce or permit any person, or husband and wife, to be obligated, directly or indirectly, under more than one insurance premium finance agreement under this chapter at the same time for the purpose of obtaining a higher authorized charge than would otherwise be permitted by this chapter;

(5) No licensee shall take an assignment of wages as security for any insurance premium finance agreement made under this chapter;

(6) No licensee shall take a lien upon real estate as security for any insurance premium finance agreement made under this chapter, except such lien as is created by law upon the recording of an abstract of judgment;

(7) No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

[Acts 1973, 63rd Leg., p. 184, ch. 86, § 1, eff. Aug. 27, 1973.]

**CHAPTER THIRTEEN. HOME SOLICITATION TRANSACTIONS**

**Article**

- 5069-13.01. Definitions.
- 5069-13.02. Consumer's Right to Cancel.
- 5069-13.03. Violations.

**Article**

- 5069-13.04. Merchant's Compensation.
- 5069-13.05. Retention of Goods or Realty.
- 5069-13.06. Duty of Consumer.

**Art. 5069-13.01. Definitions**

As used in this Act:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(4) "Merchant" means a party to a consumer transaction other than a consumer.

(5) "Home solicitation transaction" means a consumer transaction:

(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds \$25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(B) for the purchase of realty, payable in installments or in cash where the consideration exceeds \$100 in which the merchant or person acting for him engages in a solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence; but it does not include a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

[Acts 1973, 63rd Leg., p. 574, ch. 246, § 1, eff. June 11, 1973.]

**Art. 5069-13.02. Consumer's Right to Cancel**

(a) In addition to any other right to revoke an offer or to rescind a transaction, or to any other remedy for the merchant's breach, the consumer has the right to cancel a home solicitation transaction until midnight of the third business day after the day on which the con-

sumer signs an agreement or offer to purchase in a home solicitation transaction.

(b) The merchant must furnish the consumer with a fully completed receipt or copy of any contract pertaining to the home solicitation transaction at the time of its execution, which is in the same language, e. g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the merchant, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(c) The merchant must furnish each consumer, at the time he signs the home solicitation transaction contract or otherwise agrees to buy realty, consumer goods or services from the merchant, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10 point bold face type the following information and statements in the same language, e. g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

(enter date of transaction)

"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIAL- LY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO

(Name of merchant), (Address of merchant's place of business)

AT

(Date)  
NOT LATER THAN MIDNIGHT OF \_\_\_\_\_  
I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)"

[Acts 1973, 63rd Leg., p. 575, ch. 246, § 2, eff. June 11, 1973.]

Art. 5069-13.03. Violations

(a) It shall constitute a deceptive trade practice and a violation of this Act for any merchant to:

(1) fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the merchant, the address of the merchant's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation;

(2) include in any home solicitation transaction contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this Act including specifically his right to cancel the transaction in accordance with the provisions of this Act;

(3) fail to inform each consumer orally, at the time he signs the contract or purchases the realty, goods or services, of the consumer's right to cancel;

(4) misrepresent in any manner the consumer's right to cancel;

(5) fail or refuse to honor any valid notice of cancellation by a consumer and, within 10 business days after the receipt of such notice, to:

(A) fail to refund all payments made under the contract or sale;

(B) fail to return any goods or property traded in, in substantially as good condition as when received by the merchant;

(C) fail to cancel and return any negotiable instrument executed by the consumer in connection with the contract of sale and take any action nec-

essary or appropriate to terminate promptly any security interest created in the transaction; or

(D) fail to restore improvements on real property to the condition in which he found them unless requested otherwise by the consumer;

(6) negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; or

(7) fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the merchant intends to repossess or to abandon any shipped or delivered goods.

(b) Any sale or contract entered into in a home solicitation transaction in violation of this Act as set out in Subsection (a) of this section is void and unenforceable.

(c) Any merchant who violates a provision of this Act is liable to the consumer for any actual damages suffered by the consumer as a result of the violation, attorneys' fees reasonable in relation to the amount of work done, and court costs.

(d) If the merchant fails to tender the goods or property traded in, in substantially as good condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

[Acts 1973, 63rd Leg., p. 576, ch. 246, § 3, eff. June 11, 1973.]

**Art. 5069-13.04. Merchant's Compensation**

If the merchant has performed any services pursuant to a home solicitation transaction prior to its cancellation under this Act the merchant is entitled to no compensation.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 4, eff. June 11, 1973.]

**Art. 5069-13.05. Retention of Goods or Realty**

Until the merchant has complied with the obligations imposed by this Act, the consumer may retain possession of goods or right or title to realty delivered to him by the merchant and has a lien on the goods or realty in his possession or control for any recovery to which he is entitled.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 5, eff. June 11, 1973.]

**Art. 5069-13.06. Duty of Consumer**

(a) Within a reasonable time after a home solicitation transaction has been cancelled or an offer to purchase revoked, the consumer on demand must tender to the merchant any goods delivered by the merchant pursuant to the sale, or tender to the merchant the transfer of any right or title to realty delivered by the merchant back to him. The consumer is not obligated to tender goods at any place other than

his residence. If the merchant fails to demand possession of the goods or the right or title to realty within a reasonable time after cancellation or revocation, the goods or the realty become the property of the consumer without obligation to pay for them. For the purpose of this section, 20 days is presumed to be a reasonable time.

(b) The consumer has a duty to take reasonable care of the goods or the realty in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods or realty are otherwise at the merchant's risk.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 6, eff. June 11, 1973.]

[Chapters 14 to 49 reserved for expansion]

**CHAPTER FIFTY. MISCELLANEOUS PROVISIONS**

**Article**

5069-50.01. Applicability of Standard Rules of Construction.

5069-50.02. Saving Clause.

5069-50.03. Statutes Repealed.

5069-50.04. Act Cumulative.

5069-50.05. Severability.

5069-50.06. Effective Date.

*[The provisions of this Chapter apply to Acts 1967, 60th Leg., p. 609, ch. 274, § 2, enacting Chapters 1 to 9 of this Title.]*

**Art. 5069-50.01. Applicability of Standard Rules of Construction**

Unless specifically altered by this Act or unless the context requires otherwise, the provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, 1925, and of Acts, 50th Legislature 1947, Chapter 359, compiled as Texas Civil Statutes, Article 23a (Ver-non's 1948) apply to this Act. Division headings are not a part of this Act. They are mere catchwords designed to give some indication of the contents of the sections and articles to which they are attached.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 3, eff. Oct. 1, 1967.]

**Art. 5069-50.02. Saving Clause**

The repeal of any law, or the creation of any new law, by this Act shall not affect or impair any act done or obligation, right, license or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, or penalty. Fees or penalties incurred under any law repealed by this Act are an obligation within the meaning of this Section. A person now licensed under the Texas Regulatory Loan Act,<sup>1</sup> upon surrender of the existing license, shall be issued a license under Chapter 3 of this Act without application therefor or payment of any investigation fee or any annual fee for a period for which an annual Texas Regulatory Loan Act license fee has been paid. At any time

within thirty days after the effective date of Chapter 3 of this Act a person who before April 1, 1967, has paid the pawnbrokers occupation tax imposed by Article 19.01(4)<sup>2</sup> of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, for the calendar year 1967 shall, upon surrender of the receipt of such payment, be issued a license under Chapter 3 of this Act without application therefor or payment of any investigation fee or any license fee for the calendar year 1967. In addition, all records, funds, equipment or other assets of the Office of Regulatory Loan Commissioner, created by the Texas Regulatory Loan Act, shall become vested in the Office of Consumer Credit Commissioner, for use in carrying out the duties imposed by this Act.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 4, eff. Oct. 1, 1967.]

<sup>1</sup> Article 6165b (repealed).

<sup>2</sup> Repealed.

#### Art. 5069-50.03. Statutes Repealed

Chapter 199, Acts of the 59th Legislature, Regular Session, 1965, compiled as Article 1137p, Vernon's Texas Penal Code, Chapter 467, Acts of the 52nd Legislature, 1951, compiled as Article 5074a, Vernon's Texas Civil Statutes; and Title 79 of the Revised Civil Statutes of Texas, 1925, as amended; and Chapter 205, Acts of the 58th Legislature, Regular Session, 1963, otherwise known as the "Texas Regulatory Loan Act," compiled as Article 6165b, Vernon's Texas Civil Statutes; Chapter 144, Acts of the 48th Legislature, 1943, as amended by Chapter 205, Section 25, Acts of the 58th Legislature, Regular Session, 1963, compiled as Article 4646b, Vernon's Texas Civil Statutes; and Articles 6146 through 6161, Revised Civil Statutes of Texas, 1925; and that part of Chapter 1, Acts of the 56th Legislature, 3rd Called Session, 1959, compiled as Article 19.01(4), Vernon's Texas Civil Statutes; and Article 1126 of the Texas Penal Code are hereby repealed. All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency, except as otherwise provided in this Act, and except that nothing herein contained in this Act shall affect those laws specified. Provided further, that the amendment or repeal of any law of this State by this Act shall not affect any right accrued or established, or any liability or penalty incurred under the provisions of any of such other laws prior to the amendment or repeal thereof.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967.]

#### Art. 5069-50.04. Act Cumulative

The provisions of this Act are cumulative of the Texas Banking Code of 1943, as amended;<sup>1</sup> the "Texas Savings and Loan Act," as amended;<sup>2</sup> and Articles 2461 through 2484, Revised Civil Statutes of Texas, 1925, as amended and the amendments thereto,<sup>3</sup> and Section 5 of House Bill No. 47, Acts of the 46th Legislature, Regular Session, 1939, and

Chapter 173, Acts of the 51st Legislature, Regular Session, 1949, relating to Credit Unions and the amendments thereto.<sup>4</sup>

[Acts 1967, 60th Leg., p. 660, ch. 274, § 6, eff. Oct. 1, 1967.]

<sup>1</sup> Article 342-101 et seq.

<sup>2</sup> Article 852a.

<sup>3</sup> Repealed. See, now, art. 2461-1 et seq.

<sup>4</sup> Articles 2461 to 2484c (repealed).

#### Art. 5069-50.05. Severability

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

[Acts 1967, 60th Leg., p. 660, ch. 274, § 7, eff. Oct. 1, 1967.]

#### Art. 5069-50.06. Effective Date

This Act shall become effective at midnight on September 30, 1967. It applies to transactions entered into after that date. Provided, however, that Chapters 6 and 7 of Section 2 of this Act shall not become effective until midnight on December 31, 1967. Insofar as these two Chapters are concerned, this Act applies to transactions entered into after that date.

[Acts 1967, 60th Leg., p. 660, ch. 274, § 8, eff. Oct. 1, 1967.]

### CHAPTER FIFTY-ONE. PAWNSHOPS

#### Article

- 5069-51.01 Short Title.
- 5069-51.02 Definitions.
- 5069-51.03 License Required.
- 5069-51.04 Application for Pawnshop License—Contents, Bond, Statutory Agent, Minimum Assets.
- 5069-51.05 Issuance or Denial of License; Fees.
- 5069-51.06 Effect of License; Annual Fee.
- 5069-51.07 Revocation, Suspension, Surrender, Reinstatement of Licenses.
- 5069-51.08 Examinations.
- 5069-51.09 Form of Books and Records; Regulations.
- 5069-51.10 Pawn Ticket.
- 5069-51.11 Pledgor's Liability Prohibited.
- 5069-51.12 Pawn Service Charge.
- 5069-51.13 Unredeemed Pledged Goods.
- 5069-51.14 Presentation of Ticket; Presumption.
- 5069-51.15 Lost or Destroyed Ticket.
- 5069-51.16 Prohibited Practices.
- 5069-51.17 Penalties and Administrative Enforcement.
- 5069-51.18 Repealer.
- 5069-51.19 Severability.
- 5069 to 5073. Repealed.
- 5074. Repealed.
- 5074a. Repealed.

#### Art. 5069-51.01. Short Title

This Act shall be known and may be cited as the "Texas Pawnshop Act."

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 1, eff. Aug. 30, 1971.]

#### Art. 5069-51.02. Definitions

The following definitions apply where such words appear in this Act:

- (a) "Person"—means an individual, partnership, corporation, joint venture,



trust, association or any other legal entity however organized.

(b) "Pawnbroker"—means any person engaged in the business of lending money on the security of pledged goods; or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

(c) "Pledged goods"—means tangible personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(d) "Pawnshop"—means the location at which or premises in which a pawnbroker regularly conducts business.

(e) "Month"—means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then the last day of such following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth of a month.

(f) "Commissioner"—means the Consumer Credit Commissioner as defined in Article 2.01(1) of Chapter 274, Acts of 60th Legislature, Regular Session, 1967 (Article 5069-2.01(1), Vernon's Texas Civil Statutes), or his successor.

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 2, eff. Aug. 30, 1971.]

#### Art. 5069-51.03. License Required

No person shall engage in business as a pawnbroker without first obtaining a license from the Commissioner specifically authorizing engagement in such business.

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 3, eff. Aug. 30, 1971.]

#### Art. 5069-51.04. Application for Pawnshop License—Contents, Bond, Statutory Agent, Minimum Assets

(a) Applications for a pawnshop license shall be under oath, shall state the full name and place of residence of the applicant, or, if the applicant be a partnership, of each member thereof, or, if the applicant be a corporation, of each officer or major stockholder thereof, shall state the place where the business is to be conducted and shall state such other relevant information as the Commissioner may require. A separate license is required for each place of business operated under this Act.

(b) Each applicant for a pawnshop license at the time of filing application shall file with the Commissioner, if he so requires, a bond satisfactory to him and in an amount not to exceed Five Thousand Dollars for each license with a surety company qualified to do business

in this State. The aggregate liability of such surety shall not exceed the amount stated in the bond. The said bond shall run to the State for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that the obligor will comply with the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act during the time such bond is in effect.

(c) Each licensee shall maintain on file with the Commissioner a written appointment of a resident of this State as his agent for service of all judicial or other process or legal notice, unless the licensee has appointed an agent under another statute of this State. In case of non-compliance, such service may be made on the Commissioner.

(d) Each licensee shall maintain net assets of at least Twenty-Five Thousand Dollars, either used or readily available for use in the conduct of the business of each licensed pawnshop.

[Acts 1971, 62nd Leg., p. 2758, ch. 894, § 4, eff. Aug. 30, 1971.]

#### Art. 5069-51.05. Issuance or Denial of License; Fees

(a) On filing of such application, bond, proof of insurance and payment of the annual license fee and an investigation fee of Two Hundred Dollars, the Commissioner shall investigate the facts and if he finds the financial responsibility, experience, character and general fitness of the applicant are such as to warrant belief that the business will be operated lawfully and fairly, within the purposes of this Act, he shall grant such application and issue to the applicant a license which will evidence his authority to do business under the provisions of this Act. Provided, that if a license is granted pursuant to an application filed after June 30 of any year, the license fee for the balance of such year shall be Fifty Dollars.

(b) If the Commissioner does not so find, he shall notify the applicant, who shall, on request within thirty days, be entitled to a hearing on such application within sixty days after the date of said request. The investigation fee shall be retained by the Commissioner, but the annual fee shall be returned to the applicant in the event of denial.

(c) The Commissioner shall grant or deny each application for a license within sixty days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Commissioner.

(d) Provided, that within sixty days after the effective date of this Act, any person li-

censed to do business under Article 5069-3.01, et seq., Vernon's Texas Civil Statutes, Chapter 3 of Subtitle 2, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, also known as the Texas Credit Code, upon surrender of such license and the payment of a transfer fee not to exceed Five Dollars, shall be issued a license under the provisions of this Act for the same place of business, or, alternatively, any such person may retain the license to do business under Chapter 3 of the Texas Credit Code and shall be issued a license under the provisions of this Act for the same place of business upon payment of a transfer fee not to exceed Twenty-five Dollars and there shall be no annual fee for the license issued under the provisions of this Act so long as the license to do business under Chapter 3 of the Texas Credit Code is retained and annually renewed by the licensee and so long as business is conducted pursuant to both such licenses at one common place of business. In neither case shall the minimum assets requirement apply to the license issued under this Act, so long as such license is held by the original licensee or his heirs.

[Acts 1971, 62nd Leg., p. 2758, ch. 894, § 5, eff. Aug. 30, 1971.]

#### Art. 5069-51.06. Effect of License; Annual Fee

(a) Each license shall state the name of the licensee and the address at which the business is to be conducted. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Commissioner.

(b) A separate license shall be required for each pawnshop operated under this Act. The Commissioner may issue more than one license to any one person upon compliance with the provisions of this Act as to each license. When a licensee wishes to move his pawnshop to another location, he shall give thirty days' written notice to the Commissioner, who shall amend the license accordingly.

(c) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee, on or before each December 1st, shall pay the Commissioner One Hundred Dollars for each license held by him as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Commissioner, the license shall thereupon expire, but not before December 31st of any year for which an annual fee has been paid.

[Acts 1971, 62nd Leg., p. 2759, ch. 894, § 6, eff. Aug. 30, 1971.]

#### Art. 5069-51.07. Revocation, Suspension, Surrender, Reinstatement of Licenses

(a) The Commissioner may, after notice and hearing, suspend or revoke any license if he finds that:

(1) The licensee has failed to pay any fee or charge properly imposed by the Commissioner under the authority of this Act, or that

(2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or that

(3) Any fact or condition exists which, if it has existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing to issue such license.

(b) The hearing shall be held upon twenty days' notice in writing, setting forth the time and place thereof and a concise statement of the facts alleged to warrant suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact and a copy thereof shall be forthwith delivered to the licensee. Such order, findings, and the evidence considered by the Commissioner shall be filed with the public records of the Commissioner.

(c) Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(d) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor.

(e) The Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Act.

(f) On application of any person and payment of the cost thereof, the Commissioner shall furnish under his seal and signature a certificate of good standing or a certified copy of any license.

[Acts 1971, 62nd Leg., p. 2759, ch. 894, § 7, eff. Aug. 30, 1971.]

#### Art. 5069-51.08. Examinations

At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the Commissioner or his duly authorized representative shall

have free access to the office, place of business, files, safes, and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the cost of such examinations, not to exceed Two Hundred Fifty Dollars in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3 of the Texas Credit Code, Chapter 3 of Subtitle 2, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967,<sup>1</sup> in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3 of the Texas Credit Code and by this Act shall not exceed Two Hundred Fifty Dollars in any calendar year.

[Acts 1971, 62nd Leg., p. 2760, ch. 894, § 8, eff. Aug. 30, 1971.]

<sup>1</sup> Article 5069-3.01 et seq.

#### Art. 5069-51.09. Form of Books and Records; Regulations

(a) Each licensee shall keep, consistent with accepted accounting practices, adequate books and records relating to the licensee's pawn transactions, which books and records shall be preserved for a period of at least two years from the date of the last transaction recorded therein.

(b) The Commissioner may make regulations necessary for the enforcement of this Act and consistent with all its provisions. Before making a regulation the Commissioner shall give each licensee at least thirty days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no

regulation shall become effective until the expiration of at least twenty days after such mailing. On the application of any person and payment of the cost thereof, the Commissioner shall furnish such person a certified copy of any such regulation.

[Acts 1971, 62nd Leg., p. 2761, ch. 894, § 9, eff. Aug. 30, 1971.]

#### Art. 5069-51.10. Pawn Ticket

The pawnbroker, at the time the pawn transaction is entered, shall deliver to the pledgor a memorandum or ticket on which shall be clearly set forth the following:

(a) The name and address of the pawnshop;

(b) The name and address of the pledgor and pledgor's description or the distinctive number from pledgor's driver's license or military identification;

(c) The date of the transaction;

(d) An identification and description of the pledged goods, including serial numbers if reasonably available;

(e) The amount of cash advanced or credit extended to the pledgor, designated as the "Amount Financed";

(f) The amount of the pawn service charge, designated as the "Finance Charge";

(g) The total amount (the Amount Financed plus the Finance Charge) which must be paid to redeem the pledged goods on the maturity date, designated as the "Total of Payments";

(h) The "Annual Percentage Rate", computed in accordance with the regulations issued by the Federal Reserve Board of the United States pursuant to the Truth-in-Lending Act, Title I, Act of May 29, 1968, Public Law 90-321, 82 Stat. 146, as amended;<sup>1</sup>

(i) The maturity date of the pawn transaction;

(j) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

[Acts 1971, 62nd Leg., p. 2761, ch. 894, § 10, eff. Aug. 30, 1971.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

#### Art. 5069-51.11. Pledgor's Liability Prohibited

A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 11, eff. Aug. 30, 1971.]

#### Art. 5069-51.12. Pawn Service Charge

No pawnbroker may contract for, charge or receive any amount as a charge for credit in connection with a pawn transaction other than a pawn service charge, and no pawn service charge may exceed the charge disclosed in the

pawn ticket or other memorandum delivered to the pledgor. The pawn service charge may not exceed an amount equal to twenty percent of any amount of Thirty Dollars or less financed for one month, fifteen per cent of the total amount when the total amount is greater than Thirty Dollars but not in excess of One Hundred Dollars financed for one month, two and one-half percent of the total amount when the total amount is greater than One Hundred Dollars but not in excess of Three Hundred Dollars financed for one month, and one percent of the total amount when the total amount is greater than Three Hundred Dollars financed for one month, with proportionate adjustment for lesser periods of time, and in no case shall the amount financed exceed \$2,500.00. In the event pawned merchandise is redeemed by the pledgor prior to the maturity date of the pawn transaction, that portion of the pawn service charge in excess of Fifteen Dollars shall be reduced by an amount equal to one-thirtieth of the total pawn service charge for each day between the day on which redemption occurs and the original maturity date. The maturity date of any pawn transaction may be changed to a subsequent date by agreement between the pledgor and the pawnbroker evidenced by a written memorandum, a copy of which shall be supplied the pledgor, which shall clearly set out the new redemption date and any additional pawn service charge to be paid. No pawnbroker shall separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn service charge in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 12, eff. Aug. 30, 1971.]

#### Art. 5069-51.13. Unredeemed Pledged Goods

Pledged goods not redeemed by the pledgor on or before the date fixed and set out in the pawn ticket issued in connection with any transaction shall be held by the pawnbroker for at least sixty days following such date, and may be redeemed by the pledgor within such period by the payment of the originally agreed redemption price, and the payment of an additional pawn service charge equal to one-thirtieth of the original monthly pawn service charge for each day following the original maturity date including the day on which the pledged goods are finally redeemed. Pledged goods not redeemed within sixty days following the originally fixed maturity date may thereafter, at the option of the pawnbroker be forfeited and become the property of the pawnbroker.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 13, eff. Aug. 30, 1971.]

#### Art. 5069-51.14. Presentation of Ticket; Presumption

Except as otherwise provided by this Act, any person properly identifying himself and presenting a pawn ticket to the pawnbroker

shall be presumed to be entitled to redeem the pledged goods described therein.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 14, eff. Aug. 30, 1971.]

#### Art. 5069-51.15. Lost or Destroyed Ticket

If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make affidavit of the loss, destruction or theft of the ticket.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 15, eff. Aug. 30, 1971.]

#### Art. 5069-51.16. Prohibited Practices

A pawnbroker shall not:

(a) Accept a pledge from a person under the age of eighteen years.

(b) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.

(c) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Act.

(d) Fail to exercise reasonable care to protect pledged goods from loss or damage.

(e) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction.

(f) Make any charge for insurance in connection with a pawn transaction.

(g) Enter any pawn transaction which has a maturity date more than one month after the date of the transaction.

(h) Display for sale in storefront windows or sidewalk display case so that same may be viewed from the street, any pistol, dirk, dagger, blackjack, hand chain, sword cane, knuckles made of any metal or any hard substance, switchblade knife, springblade knife, or throwblade knife, or depict same on any sign or advertisement which may be viewed from the street.

[Acts 1971, 62nd Leg., p. 2763, ch. 894, § 16, eff. Aug. 30, 1971.]

#### Art. 5069-51.17. Penalties and Administrative Enforcement

(a) Any person who engages in the business of operating a pawnshop without first securing the license prescribed by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of One Thousand Dollars or by confinement in the County Jail for not more than six months, or both.

(b) Any licensee who violates this Act by contracting for, charging or receiving a pawn service charge in excess of that authorized by this Act or by failing to perform any duty imposed herein or by the commission of any act

or practice herein prohibited shall forfeit the right to collect twice the amount of the pawn service charge contracted for in the pawn transaction and upon the pledgor's request shall be obligated to return to the pledgor the pledged goods delivered to the licensee in connection with the pawn transaction upon payment of the balance remaining due, provided that there shall be no penalty for a violation resulting from an accidental and bona fide error, corrected upon discovery.

(c) Any licensee who violates this Act by contracting for, charging or receiving a pawn service charge in excess of twice the amount authorized by this Act shall forfeit the right to collect any amount on the pawn transaction and upon the pledgor's request shall be obligated to return to the pledgor the pledged goods delivered to the licensee in connection with the pawn transaction, provided that there shall be no penalty for a violation resulting from an accidental and bona fide error, corrected upon discovery.

(d) In addition to any other penalty which may be applicable, any licensee who willfully violates any provision of this Act or who willfully makes a false entry in any records specifically required by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of \$1,000.00.

(e) Compliance with the provisions of this Act may be enforced by the Commissioner, who

may exercise, for such purpose, any authority conferred upon him by law.

[Acts 1971, 62nd Leg., p. 2763, ch. 894, § 17, eff. Aug. 30, 1971.]

#### Art. 5069-51.18. Repealer

Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, codified as Article 5069-1.01, et seq., Vernon's Texas Civil Statutes, and also known as the Texas Credit Code, is amended by repealing Article 3.17 thereof.

[Acts 1971, 62nd Leg., p. 2764, ch. 894, § 18, eff. Aug. 30, 1971.]

#### Art. 5069-51.19. Severability

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

[Acts 1971, 62nd Leg., p. 2764, ch. 894, § 19, eff. Aug. 30, 1971.]

Arts. 5069 to 5073. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967

Art. 5074. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

Art. 5074a. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967

## TITLE 80

### INTOXICATING LIQUOR [Repealed]

Arts. 5075 to 5114. Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, § 49

See, now, Penal Auxiliary Laws, art. 666-1 et seq., in Volume 1.

# TITLE 81

## JAILS

### Article

- 5115. Jails Provided.
- 5115a. Counties of Less Than 20,000; Joint Financing, Construction, Maintenance and Operation with Cities; Bonds.
- 5115b. Counties of 68,000 to 71,150; Contracts with Cities for Jails or Jail Facilities.
- 5116. Sheriff and Jailer.
- 5117. Marshal May Use Jail.
- 5118. Prisoner Sent to Another Jail.
- 5118a. Commutation for Good Conduct; Forfeiture of Commutation; Record.

### Art. 5115. Jails Provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health.

### SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed

or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of seven (7) days. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

### SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block. Furthermore, that all such enclosures or cell blocks, for the confinement of prisoners, shall be separated from the building wall on at least one (1) side, by a corridor not less than three (3) feet wide and so designed that no prisoners in confinement areas shall have direct access to windows in the walls of the building.

#### SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act shall become applicable to all jails hereafter constructed, upon its effective date, and to existing jails within four (4) years from its effective date.

The Texas State Department of Health shall have general charge and supervision of the enforcement of the provisions of this Act, and it is hereby made the duty of the Texas State Department of Health or any Inspector or Agent of the Texas State Department of Health to make periodic inspection of the aforesaid jails and issue an advisory manual setting forth the principles of safe and healthful provisions, which shall be distributed to Commissioners Courts and/or custodians of jails and, furthermore, to officially notify County Commissioners Courts, in writing to comply fully with the provisions of this Act.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 637, ch. 277, § 1.]

#### Art. 5115a. Counties of Less Than 20,000; Joint Financing, Construction, Maintenance and Operation With Cities; Bonds

Sec. 1. That any county having less than 20,000 population according to the last or any succeeding Federal Census and any city or cities therein located are hereby authorized and empowered to finance, construct, maintain and operate jail, jails or jail facilities for the joint and mutual use of such county and city or cities. The Commissioners Court of any such county and the governing body of any such city or cities are hereby authorized and empowered to enter into contracts between any such county or city determining the obligations of each for the financing, construction, maintenance and operation of such jail, jails, or jail facilities, provided that the term of any such contract for the maintenance and operation of such jail, jails or jail facilities shall not exceed twenty (20) years. Such contracts where not in conflict with the provisions of the Constitution of the State of Texas may provide for the custody, control and operation of such jail, jails or jail facilities, including providing for a jailer to be custodian of such jail, jails or jail facilities, which said jailer shall be under the control and supervision of the sheriff of such county and shall be appointed by the sheriff with the advice and consent of the Commissioners Court and the governing body of such city or cities; providing that the salary for such jailer shall be in an amount as may be now or hereafter authorized by law for a deputy sheriff of such county and may be paid by such city or cities and by such county out of the Officers Salary Fund in such proportions as may be agreed upon by contract as herein provided. Where not expressly provided to the contrary herein, any such jailer, his rights, duties, salary and tenure of office shall be controlled by the laws governing deputy sheriffs.

Sec. 2. Such county and city or cities are hereby authorized to issue and sell bonds as now provided by law and to expend the proceeds for the purposes herein authorized, but any such bonds shall be and remain the sole obligation of the authority issuing such bonds. Any funds of such county and city or cities derived from sale of such bonds shall remain in the possession and control of the issuing authority until expended by such authority as herein authorized.

Sec. 3. This Act shall be cumulative of all other laws pertaining to county and city jails; provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, the provisions of this Act shall take precedence and prevail. [Acts 1961, 57th Leg., p. 1023, ch. 450.]

#### Art. 5115b. Counties of 68,000 to 71,150; Contracts With Cities for Jails or Jail Facilities

Sec. 1. That any county having a population of not less than 68,000 nor more than 71,150 according to the last preceding federal cen-

sus, in lieu of providing and maintaining its own jail, is hereby authorized to provide safe and suitable jail, jails or jail facilities for such counties by contracting with the city which is the county seat of any such county, for incarceration of the counties' prisoners in the jail, jails or jail facilities owned by said city or cities, on a daily per capita basis, for the lease of a portion of the jail, jails or jail facilities owned by such city or for joint operation and maintenance of the jail, jails or jail facilities owned and operated by such city for the mutual use and benefit of any such county and city, provided said jail, jails or jail facilities meet the requirements set forth in Chapter 277, Section 1, page 637, Acts 1957, 55th Legislature (Article 5115, Revised Civil Statutes of Texas, 1925, as amended). The Commissioners Court of any such county and the governing body of any such city are hereby authorized and empowered to enter into contracts for the incarceration of any such county's prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, jails or jail facilities or at a daily rate mutually agreed upon by the contracting counties and cities; contracts for lease of a portion of the jail, jails or jail facilities at a rate based upon the proportion of the total area of the jail, jails or jail facilities that is occupied by such counties' prisoners; and contracts for the joint maintenance and operation of such jail, jails or jail facilities determining the respective obligations of each for the maintenance and operation of any such jail or jails, provided that any such contract for lease or for joint maintenance and operation shall not exceed 20 years. Such contracts where not in conflict with the Constitution of the State of Texas may provide for custody, control and operation of such jail, jails or jail facilities, including providing for a jailer to be custodian of such jail, jails or jail facilities, which said jailer shall be under the control and supervision of the sheriff of such county and shall be appointed by the sheriff with the advice and consent of the Commissioners Court and the governing body of such city; providing that the salary of such jailer shall be in an amount as may be now or hereafter authorized by law for a deputy sheriff of such county and may be paid by such city or cities and by such counties in such proportions as may be agreed upon by such contracts as herein provided. Where not expressly provided to the contrary herein, any such jailer, his rights, duties, salary and tenure of office shall be controlled by the laws governing deputy sheriffs.

Sec. 2. This Act shall be cumulative of all other laws pertaining to county and city jails; provided, however, that to the extent that the provisions hereof conflict with any other law, the provision of this Act shall take precedence and prevail.

[Acts 1967, 60th Leg., p. 1969, ch. 731, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 1821, ch. 542, § 23, eff. Sept. 1, 1971.]

#### Art. 5116. Sheriff and Jailer

(a) Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners.

(b) The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail.

(c) The commissioners court of Bexar County, Texas may appoint a jail administrator who shall exercise all authority, supervision, and control over the jail, as well as all other statutory duties of the sheriff with respect to the jail.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 520, ch. 224, § 1, eff. June 11, 1973.]

#### Art. 5117. Marshal May Use Jail

Sheriffs and jailers shall receive into their jails such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law. The marshal by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases.

[Acts 1925, S.B. 84.]

#### Art. 5118. Prisoner Sent to Another Jail

A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

[Acts 1925, S.B. 84.]

#### Art. 5118a. Commutation for Good Conduct; Forfeiture of Commutation; Record

In order to encourage county jail discipline, a distinction may be made in the terms of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one third ( $\frac{1}{3}$ ) of the original sentence may be made from the term or terms of sentences when no charge of misconduct has been sustained against the



prisoner. This Act shall be applicable regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For such sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape) any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken

away by the sheriff. No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences. The sheriff shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all forfeitures of commutation time and the reasons therefor.

[Acts 1955, 54th Leg., p. 1182, ch. 461, § 1; Acts 1963, 58th Leg., p. 943, ch. 371, § 1.]

# TITLE 82

## JUVENILES

**Article**

- 5119. Instruction of Inmates.
- 5119a. Gatesville State School for Boys.
- 5119b. Gainesville State School for Girls.
- 5120. The Superintendent.
- 5121. Powers and Duties of the Superintendent.
- 5122. Employment of Officers, etc.
- 5123. Religious Services.
- 5124. Conveying Male to School.
- 5125. Repealed.
- 5126. Promotion and Discharge of Inmates.
- 5127. Escape and Apprehension.
- 5128. Limitation of Term.
- 5129. Care of Inmates.
- 5130. Punishment of Inmates.
- 5131. Repealed.
- 5132. Repealed.
- 5133. Superintendent and Officers.
- 5134. Rules and Regulations.
- 5135. Repealed.
- 5136. Conveying to School.
- 5137. Dismissal of Inmates.
- 5138. Detention Homes and Parental Schools.
- 5138a. Parental Homes and Schools for Delinquents in Certain Counties.
- 5138b. Parental Homes and Schools for Delinquents in Counties of 900,000 or More.
- 5138c. Certificates of Indebtedness for Homes and Schools for Delinquents in Counties of 900,000 or More Inhabitants.
- 5139. County Juvenile Board.
- 5139A. Juvenile Board in Certain Counties.
- 5139B. Counties Over 100,000 Bordering on Mexico.
- 5139C. Laws Saved From Repeal; County Judges' Compensation Not Counted as Fees.
- 5139D. Juvenile Board in Certain Counties in District Bordering on Mexico.
- 5139E. Juvenile Boards in Certain Counties.
- 5139E-1. Juvenile Boards in Certain Counties.
- 5139E-2. Appointment of Judge of Court of Domestic Relations as Juvenile Board Member in Counties of 75,800 to 78,000.
- 5139F. Juvenile Board in Counties of 110,000 to 125,500; Additional Compensation.
- 5139G. Juvenile Board in Counties Comprising Special 9th District Court; Additional Compensation.
- 5139H. Juvenile Boards in Counties of 12th Judicial District.
- 5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts; Additional Compensation.
- 5139H-2. Juvenile Boards in Counties of Second 38th Judicial Districts; Additional Compensation.
- 5139H-3. Juvenile Boards in Counties of Second 38th Judicial District; Additional Compensation.
- 5139H-4. Juvenile Boards in 81st Judicial District; Additional Compensation.
- 5139H-5. Juvenile Boards in 36th and 156th Judicial Districts; Additional Compensation.
- 5139I. Washington County Juvenile Board.
- 5139J. Juvenile Boards in Harrison and Rusk Counties.
- 5139K. Waller County Juvenile Board.
- 5139L. Fannin County Juvenile Board.
- 5139M. Bowie County Juvenile Board.
- 5139N. Cass County Juvenile Board.
- 5139O. Titus County Juvenile Board.
- 5139P. Jefferson County Juvenile Board.
- 5139Q. Midland County Juvenile Board.
- 5139R. Panola County Juvenile Board.

**Article**

- 5139S. Hamilton County Juvenile Board.
- 5139T. Juvenile Boards in Angelina, Cherokee and Nacogdoches Counties.
- 5139U. Waller County Juvenile Board.
- 5139V. Juvenile Boards in Hardin and Tyler Counties.
- 5139W. Lamar County Juvenile Board.
- 5139X. Winkler County Juvenile Board.
- 5139Y. Nolan County Juvenile Board.
- 5139Z. Andrews County Juvenile Board.
- 5139AA. Marion County Juvenile Board.
- 5139BB. Liberty County Juvenile Board.
- 5139CC. Hunt County Juvenile Board.
- 5139DD. Gray County Juvenile Board.
- 5139EE. Crane County Juvenile Board.
- 5139FF. Hutchinson County Juvenile Board.
- 5139GG. Howard County Juvenile Board.
- 5139HH. Morris County Juvenile Board.
- 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties.
- 5139JJ. Victoria County Juvenile Board.
- 5139KK. Travis County Juvenile Board.
- 5139LL. Repealed.
- 5139MM. Dawson County Juvenile Board.
- 5139NN. Coleman County Juvenile Board.
- 5139OO. Rannels County Juvenile Board.
- 5139PP. Bell County Juvenile Board.
- 5139QQ. Bosque County Juvenile Board.
- 5139RR. Comanche County Juvenile Board.
- 5139SS. Coryell County Juvenile Board.
- 5139TT. Hidalgo County Juvenile Board.
- 5139UU. Ector County Juvenile Board.
- 5139VV. Harris County Juvenile and Child Welfare Boards.
- 5139WW. Van Zandt County Juvenile Board.
- 5139XX. Kaufman County Juvenile Board.
- 5139YY. Moore County Juvenile Board.
- 5139ZZ. Orange County Juvenile Board.
- 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards.
- 5139BBB. Nueces County Juvenile Board.
- 5139CCC. Johnson County Juvenile Board.
- 5139DDD. Deaf Smith County Juvenile Board.
- 5139EEE. Northeast Texas Juvenile Board.
- 5139FFF. Eastland County Juvenile Board.
- 5139GGG. Greg County Juvenile Board.
- 5139HHH. Collin County Juvenile Board.
- 5139III. Hill County Juvenile Board.
- 5140. Powers of Board.
- 5141. Sessions of Board.
- 5142. Qualifications, Duties, Appointment, Salaries and Removal.
- 5142a. Probation Officers; Counties of 350,000 Population.
- 5142a-1. Child Support Fund; Special Fee in Divorce Cases; Administration.
- 5142a-2. Probation Department of Wichita County.
- 5142b. Juvenile Officers in Counties of 225,000 to 390,000.
- 5142c. Juvenile Officers in Counties of 190,000 to 224,000.
- 5142c-1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts.
- 5142c-2. Juvenile Probation Officers in Counties of Over 500,000.
- 5142c-3. Juvenile Officer for Counties Within 69th Judicial District.
- 5142c-4. Juvenile Officer for Grayson County.
- 5142d. Salaries of Juvenile or Probation Officers; How Fixed; Automobile or Allowance.

## Article

5143. Repealed.  
 5143a. Repealed.  
 5143b. Clothing, Money and Transportation Furnished on Release from Gatesville and Gainesville Training Schools.  
 5143c. State Youth Development Council.  
 5143d. Texas Youth Council.  
 5143e. Repealed.  
 5143f. County Agreements for Joint Probation Services, Detention and Diagnostic Facilities for Juvenile Delinquents.

**Art. 5119. Instruction of Inmates**

The Board of Control and the Superintendent of the State Juvenile Training School<sup>1</sup> shall provide for and maintain suitable instruction and training of the inmates of said school. Said instruction shall include common school or agricultural branches, or all as may be deemed desirable by said Board and superintendent. The Board and superintendent shall arrange for each inmate to receive a reasonable amount of instruction in the school of letters and industrial branch each year. Each inmate shall be given definite instruction and training in some useful occupation and shall be given such moral training and discipline as he is capable of receiving.

[Acts 1925, S.B. 84.]

<sup>1</sup> Name changed to Gatesville State School for Boys. See art. 5119a.

**Art. 5119a. Gatesville State School for Boys**

The name of the State Juvenile Training School which is located at Gatesville, Texas, be, and the same is hereby changed and shall hereafter be known and designated as the Gatesville State School for Boys.

[Acts 1939, 46th Leg., p. 432, § 1.]

**Art. 5119b. Gainesville State School for Girls**

The name of the Girls' Training School which is located at Gainesville, Texas, be, and the same is hereby, changed and shall hereafter be known and designated as the Gainesville State School for Girls.

[Acts 1939, 46th Leg., p. 432, § 1.]

**Art. 5120. The Superintendent**

The superintendent shall be a man of high moral character, education and training, and shall have had experience in handling wayward boys. He shall take the official oath and shall give a sufficient bond in the sum of ten thousand dollars payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Secretary of State.

[Acts 1925, S.B. 84.]

**Art. 5121. Powers and Duties of the Superintendent**

The superintendent shall:

1. Keep a register in which he shall enter the name of each inmate, date of reception, previous moral character, habits and

education, so far as can be ascertained, his conduct and deportment, educational and vocational advancement while in said school, the discharge, death, escape, commutation of time, parolment and punishment of each person admitted to said school.

2. See that the buildings and premises are kept in good and sanitary order.

3. Cause to be kept the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced on the farm, whether sold or consumed, and shall at all times be open for the inspection of the Board or the Governor.

[Acts 1925, S.B. 84.]

**Art. 5122. Employment of Officers, etc.**

The superintendent shall employ subordinate officers, teachers and employees necessary to the conduct, administration and maintenance of said institution up to the standards of efficiency and utility essential to accomplish the best results. Any employee who uses tobacco or intoxicating liquor in any form while on duty shall be discharged by the superintendent. The superintendent with the consent of the Board may discharge any employee for cause.

The salaries and compensation of all subordinate officers, teachers and employees shall be fixed by the Board in the form of an itemized account to be sworn to by the superintendent. Such salaries shall not exceed the amounts appropriated for same and shall be paid monthly on the Comptroller's warrants based upon such account. Said account shall contain the name and address of each person and the amount due and for what service. No account for salary shall be presented by said superintendent until the same has been fixed by said Board.

[Acts 1925, S.B. 84.]

**Art. 5123. Religious Services**

The Board shall provide for religious services at said institution for the benefit of the inmates thereof, and shall employ a chaplain who shall be an ordained minister of the gospel. The superintendent shall require all inmates in said institution who are physically able to attend at least one religious service on each Sunday. Such chaplain shall, under the direction of the superintendent, devote his time to the religious and moral training and education of said inmates, and to visiting sick inmates whenever necessary, and shall receive an annual salary not to exceed seven hundred and twenty dollars. Such chaplain may also be a teacher, such as is provided in the preceding article.

[Acts 1925, S.B. 84.]

**Art. 5124. Conveying Male to School**

The officer conveying any male to any State training school shall be paid by the county in which such child was convicted the actual traveling expenses of such officer and child, and five dollars additional.

[Acts 1925, S.B. 84.]

**Art. 5125. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6****Art. 5126. Promotion and Discharge of Inmates**

The Board shall establish and maintain in said school a system of grading and promotion on a basis of the moral, intellectual and industrial advancement of the inmates. When the superintendent is satisfied that any inmate has acquired sufficient self-control, moral habits and industrial efficiency, and suitable employment under a responsible, sober and moral person can be found for said inmate, he shall, with the approval of said Board, grant said inmate "leave of probation." To secure homes and employment for inmates and of visiting and supervising them while on probation, a furlough officer shall be employed who shall, when not engaged with his duties as such officer, assist in teaching and in the general work of the school under the direction of the superintendent. When employment has been secured for any inmate he shall be sent out on a furlough with the condition that the person furloughed and his employer shall send a written report at the end of each month thereafter for a period of twelve months to the furlough officer stating the habits and demeanor of said furloughed person. If each report be favorable the superintendent shall recommend to the Governor that a full release be granted such juvenile and that his term of commitment be terminated. If any monthly report shall be deemed unfavorable, or be not sent as herein provided, and the superintendent should become convinced before the expiration of the said twelve months that said furloughed person should be returned to the school for further training or discipline, the said inmate shall in that event forfeit his leave of probation, and shall be returned to school. If his employer shall fail or refuse to return said furloughed person to said school it shall be the duty of the furlough officer or any peace officer, upon notice from the superintendent, to take such furloughed person into custody, under the same conditions as if he were an escaped inmate, and return him to said school in the manner prescribed in the succeeding article. The Governor shall at any time have power to grant a pardon to any inmate of said school.

[Acts 1925, S.B. 84.]

**Art. 5127. Escape and Apprehension**

If any inmate of said school shall escape therefrom, or if on leave of probation or furlough and is ordered returned and the employer of said furloughed person fails or refuses to

return him it shall be the duty of the superintendent of said institution or any officer or employé of same, or any peace officer to apprehend him. Any person may lawfully apprehend such escaped inmate and forthwith deliver him to any peace officer. Any such escaped inmate shall be returned to said school by any furlough, probation or peace officer. The cost of his return shall be paid by the county from which said inmate was committed.

[Acts 1925, S.B. 84.]

**Art. 5128. Limitation of Term**

Commitments to such school shall be upon the indeterminate sentence plan. No juvenile shall remain or be detained therein or upon parole under the control of the officers of said school after he becomes twenty-one years old.

[Acts 1925, S.B. 84.]

**Art. 5129. Care of Inmates**

The superintendent shall divide the inmates into such classes and shall house, feed and train them in such manner as he deems best for the development and advancement of the child. All inmates shall be provided with shelter, wholesome food and suitable clothing, books, means of healthful recreation and other material necessary for their training, at the expense of the State, except as otherwise provided by law.

[Acts 1925, S.B. 84.]

**Art. 5130. Punishment of Inmates**

Sec. 1. Corporal punishment in any form shall not be inflicted upon any boy who is an inmate of said institution except as a last resort to maintain discipline and then only after the evidence has been presented to the Superintendent and the Chaplain and they have carefully considered same. In the event they deem it necessary they shall first have the school physician carefully examine the boy to determine the condition of his health. If he is found to be in good health the Superintendent and the Chaplain shall sign a whipping order. The whipping shall take place in the presence of the Superintendent, the Chaplain and the school physician and not in the presence of any other inmate. The boy shall not receive over ten (10) licks with a light strap for any offense for which he is being punished. The child being whipped shall at no time ever have the skin broken or shall ever be struck except as hereinabove provided by any guard or employee of said school or shall he be in any way abused or threatened by any guard or employee.

Sec. 2. If any employee be found guilty of abusing, threatening, striking, breaking the skin or whipping any boy without first complying with the above set out requirements, he shall be deemed guilty of and filed on for aggravated assault. If any Superintendent in possession of information about any employee guilty of any of the above offenses fails to in-

investigate such offenses and discharge the employee or employees guilty thereof, he shall himself be discharged by the Board of Control after a proper hearing before said Board.

Sec. 3. All whipping orders issued in the said school shall be preserved as permanent records and shall reflect the offense for which said inmates are punished. Said orders shall also have attached thereto and preserved therewith the written report of the examination by the physician, the name of the person administering the whipping and the names of the witnesses present at the whipping.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 385, ch. 247, § 1.]

**Art. 5131. Repealed by Acts 1927, 40th Leg., p. 233, ch. 159, § 1**

**Art. 5132. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6**

**Art. 5133. Superintendent and Officers**

The Board shall employ as superintendent of such school a man or a woman of business experience necessary for such management, who shall have power to appoint and discharge all subordinate officials and teachers for the school. The Board shall fix the salary of the superintendent and all employees as provided for by appropriation. The Board shall have power to remove the superintendent for cause, and the decision of said Board in such matter shall be final.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 174, ch. 132, § 1.]

**Art. 5134. Rules and Regulations**

The superintendent with the approval of the Board shall make all necessary rules and regulations for the government of the training school, and shall provide that the time of the pupils is properly distributed between the school of letters and the industrial and domestic pursuits, according to the needs of the pupil and the facilities at hand. Provision shall be made for giving diplomas or certificates of proficiency for graduates from the nurses training school or any industrial school that may be established by such Board.

[Acts 1925, S.B. 84.]

**Art. 5135. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6**

**Art. 5136. Conveying to School**

The court committing any girl to the Girls' Training School, in addition to the commitment, shall annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed

beyond the actual and necessary expenses of the party conveying and the girl conveyed.

[Acts 1925, S.B. 84.]

**Art. 5137. Dismissal of Inmates**

No girl shall be discharged or paroled until some suitable home has been found for her and only then upon the written recommendation of the superintendent to the Board, or unless she has become married with the consent of the Board and superintendent. The Governor shall have power to issue a pardon or commute the sentence of any inmate. Any girl who is thus paroled from the school shall be under the supervision and guidance of the superintendent who shall require that she write bi-weekly letters to the superintendent or matron of the school for the first six months and monthly letters thereafter. The person under whose care or employ the girl is placed shall write monthly letters to the superintendent or matron of the school for the first six months and semi-annually thereafter.

The Board, superintendent or any employee of said school may visit the place where the girl is and it shall be the duty of the person having the girl in custody to answer inquiries of said visiting committee concerning the conduct, employment or treatment of said girl. If, in the judgment of the Board, it should be to the best interests of the girl that she be returned to the school, the Board is empowered to have her returned.

[Acts 1925, S.B. 84.]

**Art. 5138. Detention Homes and Parental Schools**

All counties in this State may establish detention homes and parental schools for dependent and delinquent juveniles. It shall be lawful for the commissioners court to appropriate from the general fund of the county such sums as may be necessary to establish, equip and maintain such detention homes and parental schools as may be necessary to care for the dependent and delinquent children of the county. In like manner any county in which no such detention home or parental school exists may appropriate such funds as may be necessary to pay for the board and for the proper care and training of its dependent and delinquent juveniles in the detention home or parental school of any county that may agree to receive them and at such rates of board and tuition as shall be agreed upon by the commissioners courts of the counties concerned. When in the opinion of the commissioners court, it is desirable to levy a special tax for establishing and maintaining such detention home or parental school, or for paying the board and tuition of dependent and delinquent children as herein provided the said court may bring the question of levying such special tax to a vote of the qualified voters of the county at a special election held for that purpose, and the said court must submit the said question to the voters when requested to do so by a petition signed by ten per

cent of the qualified voters of the county. All elections held under the provisions of this article shall be governed in all respects not herein specified to the contrary by the laws of this State governing elections for the levy of special school taxes.

[Acts 1925, S.B. 84.]

#### Art. 5138a. Parental Homes and Schools for Delinquents in Certain Counties

##### Establishment; Commitments

Sec. 1. Counties having a population of not less than three hundred ninety thousand (390,000) and not more than five hundred thousand (500,000) according to the last preceding Federal Census, and containing a city having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred fifty thousand (350,000), according to the last preceding Federal Census, shall be jointly empowered and authorized with said city to establish, own and operate a parental home and school for the training of dependent and delinquent youth resident of that county or city. All juveniles of the county who may be declared to be dependent by any of the District Courts of the county, or found to be delinquent by any of the District Courts or the County Court of the county may be committed to the parental home owned and operated by the city and county, or to any home, school, institution or reformatory as now provided by law. The commitment of any dependent child to said parental home shall be in the manner now provided in Title 43 of the Revised Civil Statutes of 1925.<sup>1</sup> The commitment of any delinquent child to said parental home shall be in the manner now provided in Title 16 of the Code of Criminal Procedure of 1925.<sup>2</sup>

<sup>1</sup> Article 2330 et seq. (see, now, Family Code).

<sup>2</sup> Code of Criminal Procedure, Arts. 1083 to 1093 (repealed).

##### Purchase, Establishment, Building, Equipment and Maintenance

Sec. 2. The Commissioners' Court shall have authority to cooperate with and join the proper authority of the city in the purchase, establishment, building, equipment, and maintenance of a parental home and school for the care and training of dependent and delinquent youth, and it shall be lawful for the Commissioners' Court to appropriate from the General Fund of the county such sum as may be necessary to purchase, establish, equip, and maintain such home and school.

##### Bond Issue

Sec. 3. Unless adequate funds for the building of said home and school can be derived from the current funds of the county, available for such purpose, issuance of county warrants and scrip, the Commissioners' Court may submit either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the purpose of building and equipping such a home and school. The Commissioners' Court

shall be required to submit said proposition of the issuance of bonds upon petition of five hundred (500) qualified taxpaying voters of said county. The Commissioners' Court is hereby authorized to assess, levy, and collect such taxes upon real and personal property situated in the county as it may deem necessary to provide the funds for the erection and maintenance of said home and school and for such other necessary expenditures therefor.

##### Board of Managers

Sec. 4. Upon the establishment of said home and school, the authorities of the city and the County Commissioners' Court, at a joint meeting, shall select a board of managers of five (5) citizens of the county who shall serve for the period of two years. Said board of managers will have authority to receive all funds provided by the city and county for the establishment and maintenance of said home and school, and shall have the general management and control of said home and school, the grounds, buildings, offices, and employees thereof, of the inmates therein and of all matters relating to the government, discipline, and conduct thereof, and make such rules and regulations as may seem to be necessary for carrying out the purpose of said home and school.

##### Acceptance of Grants, Devises and Donations

Sec. 5. Subject to the approval of the authorities of the city and the Commissioners' Court, said board shall have power and authority to accept and hold in trust for said home and school any grant or devise of land or any gift or bequest of money or other personal property, or any donation to be applied for the benefit of said home and school and to apply same in accordance with the terms of such gift.

##### Instructional or Educational Work

Sec. 6. The board of managers of said home and school shall have authority to arrange with the Board of Education of the city for instructional work in said home and school, and it shall be the duty of the Board of Education of the city to cooperate with said board of managers in carrying out the purpose of said home and school, and said Board of Education of the city is hereby authorized to appropriate such funds as may be necessary for employing teachers and carrying on the necessary educational work in said home and school, whether the same is located within the limits of the independent school district of the city or outside the limits of the independent school district of the city.

##### Validation of Bonds

Sec. 7. Any city which has heretofore authorized bonds to be issued for such a home or institution are hereby validated.

[Acts 1931, 42nd Leg., Spec.Laws, p. 189, ch. 88; Acts 1941, 47th Leg., p. 372, ch. 209, § 1; Acts 1941, 47th Leg., p. 1340, ch. 606, § 1.]

**Art. 5138b. Parental Homes and Schools for Delinquents in Counties of 900,000 or More****Board of Managers; Term; Powers and Duties**

Sec. 1. In all counties of this state having a population of nine hundred thousand (900,000) or more, according to the last preceding Federal Census, in which a parental home and school for dependent and delinquent children shall have been established under the provisions of Article 5138a of the Revised Civil Statutes of Texas, the Commissioners Court of said county may appoint a board of managers of five citizens of the county who shall serve for a period of two years. Said board of managers will have the authority to receive all funds provided by the county for the maintenance of said home and school and shall have the general management and control of said home and school, the grounds, buildings, officers, and employees thereof, of the inmates therein and of all matters relating to the government, discipline and conduct thereof, and shall make such rules and regulations as may seem to be necessary for carrying out the purposes of said home and school.

**Operation and Maintenance**

Sec. 2. The Commissioners Court shall have the authority to provide funds for the operation and maintenance of said home and school, and it shall be lawful for the Commissioners Court to appropriate from the General Fund of the county such sum as may be necessary to operate and maintain such home and school.

**Acceptance of Grants, Devises and Donations**

Sec. 3. Subject to the approval of the County Commissioners Court, said board shall have power and authority to accept and hold in trust for said home and school any grant or devise of land or any gift or bequest of money or other personal property, or any donation to be applied for the benefit of said home and school and to apply same in accordance with the terms of such gift.

**Instructional and Educational Work**

Sec. 4. The board of managers of said home and school shall have authority to arrange with the Board of Education of the county for instructional work in said home and school, and it shall be the duty of the Board of Education of the county to cooperate with said board of managers in carrying out the purpose of said home and school, and said Board of Education of the county is hereby authorized to appropriate such funds as may be necessary for employing teachers and carrying on the necessary educational work in said home and school. [Acts 1961, 57th Leg., p. 91, ch. 53.]

**Art. 5138c. Certificates of Indebtedness for Homes and Schools for Delinquents in Counties of 900,000 or More Inhabitants**

Sec. 1. Any county having a population in excess of 900,000, according to the most recent Federal Census, is authorized, subject to the

limitations contained in this Act, to issue certificates of indebtedness for the purpose of constructing, enlarging, furnishing, equipping and repairing buildings to provide homes and schools for dependent or delinquent boys and girls or for either, and the acquisition of sites therefor.

Sec. 2. Such certificates shall be authorized by order of the Commissioners Court, shall mature in not to exceed thirty-five (35) years from their date, and bear interest at a rate not to exceed five per cent (5%). Interest may be evidenced by coupons. Said certificates shall be sold for cash, and they shall be fully negotiable. Said certificates shall be signed by the County Judge and attested by the County Clerk. Facsimile signatures of the County Judge and the County Clerk may be printed or lithographed on the interest coupons. In lieu of manually signing said certificates, the facsimile signatures of either or both of said officials may be lithographed or printed thereon as provided in Chapter 204, Acts of the 57th Legislature, Regular Session.<sup>1</sup> Said certificates shall be sold for not less than par and accrued interest to the bidder who offers to purchase the same at the lowest net interest cost to the county. Certificates shall not be issued under this Act in excess of \$300,000, and no such certificates shall be issued after two years after the effective date of this Act.

Sec. 3. When such certificates are issued, it shall be the duty of the Commissioners Court to levy and have assessed and collected a tax under Article VIII, Section 9 of the Constitution, sufficient to pay the principal of and the interest on the certificates as such principal and interest become due.

Sec. 4. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination and if they have been issued in accordance with the Constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, who shall endorse his certificate of registration thereon, and thereafter they shall be incontestable.

Sec. 5. The certificates of indebtedness shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, savings and loan associations, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas, and of any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions of the State of Texas; and such certificates shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is

the smaller, when accompanied by all unma-  
tured coupons appurtenant thereto.  
[Acts 1967, 60th Leg., p. 1013, ch. 443, eff. June 12,  
1967.]

<sup>1</sup> See, now, article 717j-1.

#### Art. 5139. County Juvenile Board

In any county of this State which comprises a part of two Judicial Districts, each of which Districts consists of four and the same four counties, and which four counties have a combined population of not less than one hundred sixteen thousand (116,000) inhabitants according to the last preceding or any future Federal Census, the Judges of the Districts Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Three Hundred (\$300.00) Dollars per annum, nor more than Twelve Hundred (\$1200.00) Dollars per annum, which shall be paid in twelve equal monthly installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of less than seventy thousand (70,000) inhabitants according to the last preceding Federal Census, which county is included in, and forms a part of a Judicial District of seven or more counties having a combined population of more than fifty-two thousand (52,000) inhabitants, or which county is included in and forms a part of a Judicial District of five or more counties having a combined population of more than seventy-two thousand (72,000) and less than ninety-five thousand (95,000) inhabitants according to the last preceding Federal Census, or which county is included in and forms a part of a Judicial District of five or more counties, in one or more of which counties the civil and criminal jurisdiction vesting by General Law in the County Court has been, or hereinafter shall be, transferred to the exclusive jurisdiction of the District Court of such county or counties, and having a combined population in such Judicial District of more than thirty-five thousand (35,000) inhabitants, according to the last preceding Federal Census; or which county is included in and forms a part of a Judicial District composed of four counties having a combined population of not more than sixty-two thousand (62,000) inhabitants according to such last preceding Federal Census, one or more counties in which districts border on the International Boundary between the United States and the Republic of Mexico; the Judge of such Judicial District, together with the County Judge of such county are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in each such county shall each be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum, and not more than Three Hundred (\$300.00) Dollars

per annum, which shall be paid in twelve equal installments out of either the General Fund or the jury fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of more than seventy thousand (70,000) inhabitants and less than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Six Hundred (\$600.00) Dollars per annum, nor more than One Thousand, Two Hundred (\$1,200.00) Dollars per annum, which shall be paid in twelve equal installments out of the General Fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of one hundred thousand (100,000) inhabitants or over, according to the preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of each county, are hereby constituted a Juvenile Board of such county. The annual salary of each of the Judges of the Civil and Criminal District Courts of such county as members of said Board shall be One Thousand, Five Hundred (\$1,500.00) Dollars in addition to that paid the other District Judges of the State, said additional salary to be paid monthly out of the General Fund of such county, upon the order of the Commissioners Court.

In any county having a population of more than eighty thousand (80,000) inhabitants and less than eighty-four thousand (84,000) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Six Hundred (\$600.00) Dollars per annum nor more than Twenty-five Hundred (\$2500.00) Dollars per annum, which shall be paid in twelve equal installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of one hundred thousand (100,000) inhabitants or over, according to the preceding Federal Census, and which said counties border on the Gulf of Mexico, the members composing such Juvenile Board in such county, including the County Judge as a member of said Board, shall each be allowed additional compensation in the amount of One Thousand, Five Hundred (\$1,500.00) Dollars per annum, which shall be paid in twelve equal installments out of the



General Fund of such county upon the order of the Commissioners Court. Compensation here-in provided shall be in addition to the salary paid District Judges and County Judges of the State and county.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 422, ch. 268, § 1; Acts 1947, 50th Leg., p. 560, ch. 326, § 1; Acts 1949, 51st Leg., p. 63, ch. 33, § 1; Acts 1949, 51st Leg., p. 381, ch. 202, § 1; Acts 1949, 51st Leg., p. 699, ch. 366, § 1; Acts 1953, 53rd Leg., p. 58, ch. 47, § 1.]

#### Savings Provisions

See articles 3912e-4d, § 11; 5139D, § 2; 6819a-3, § 2; 6819a-5, § 2; 6819a-8, § 2.

#### Art. 5139A. Juvenile Board in Certain Counties

In all counties having a population of less than forty-five thousand (45,000) inhabitants according to the last preceding Federal Census which are included in and form a judicial district of five (5) or more counties having a combined total population of not less than sixty-eight thousand (68,000) inhabitants according to the last preceding Federal Census, the judge of the judicial district and the county judge of each county are hereby constituted as a juvenile board for each county within the judicial district. The members composing each county juvenile board within the judicial district may each be allowed additional compensation of not more than Twelve Hundred Dollars (\$1200) per annum which shall be paid in twelve (12) equal installments out of the general funds of each county, such additional compensation to each member of the board to be fixed by the Commissioners Court of each county.

[Acts 1951, 52nd Leg., p. 283, ch. 165, § 1; Acts 1957, 55th Leg., p. 701, ch. 296, § 1.]

#### Art. 5139B. Counties Over 100,000 Bordering on Mexico

In all counties having a population of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, and bordering on the Republic of Mexico, the Judges of the District Courts and the County Judges are hereby constituted a County Juvenile Board. The members of the County Juvenile Board shall each be allowed additional compensation in the amount of Fifteen Hundred (\$1500.00) Dollars per annum which shall be paid in twelve (12) equal installments out of the general funds of the county. Provided, however, that no member of such Board shall receive more than Fifteen Hundred (\$1500.00) Dollars per annum as compensation for services on such Board.

[Acts 1951, 52nd Leg., p. 543, ch. 319, § 1.]

#### Art. 5139C. Laws Saved From Repeal; County Judges' Compensation Not Counted as Fees

It is expressly declared that nothing in this Act<sup>1</sup> shall be construed to repeal Article 6819a, Acts of the Forty-ninth Legislature, Chapter

200, page 271, nor any law fixing other compensation for the Judges of the District Courts or County Judges, and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1947, 50th Leg., p. 560, ch. 326, § 2.]

<sup>1</sup> Amending art. 5139.

#### Art. 5139D. Juvenile Board in Certain Counties in District Bordering on Mexico

Sec. 1. In any county having a population of less than 70,000 inhabitants according to the last preceding Federal Census, which county is included in and forms a part of a Judicial District, in which four or more of the counties composing same border on the International Boundary between the United States and the Republic of Mexico, the Judge of such Judicial District together with the County Judge of such county are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in each such county shall each be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum and not more than Three Hundred (\$300.00) Dollars per annum, which shall be paid in twelve equal installments out of the General Fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal Article 6819a, except insofar as the same conflicts with this Act, Acts of the 49th Legislature, Chapter 200, page 271,<sup>1</sup> nor Article 5139 of the Revised Civil Statutes of Texas, 1925, as amended by Act of the 50th Legislature, Chapter 326, page 560, nor any law fixing other compensation for the Judges of the District Courts or County Judges; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1949, 51st Leg., p. 243, ch. 138.]

<sup>1</sup> Article 6819a-3.

#### Art. 5139E. Juvenile Boards in Certain Counties

(1) At the effective date of this Act there is hereby established and constituted a three-member Juvenile Board in each of the counties of this State coming within the purview of the provisions of Paragraph (2) hereof, to be composed of the county judge of the county and the district judges of the judicial districts therein. The county judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) The Juvenile Board created in the foregoing Section is established and constituted in each county wherein there are two (2) districts courts, one of which is composed of one (1) county only, the other of which is composed of two (2) counties, and in such one-county judicial district there is located a city with a population of more than twenty-four thousand

(24,000) according to the last preceding Federal Census.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may, if approved by the Commissioners Court of the County, be compensated by an annual salary not to exceed Twenty-four Hundred Dollars (\$2400) payable in twelve (12) monthly equal installments; and such compensation shall be in addition to all other compensation now provided for or allowed county and district judges by law, and shall be paid out of the general fund of the county.

[Acts 1950, 51st Leg., 1st C.S., p. 99, ch. 35, § 1; Acts 1951, 52nd Leg., p. 373, ch. 237, § 1.]

#### Art. 5139E-1. Juvenile Boards in Certain Counties

(1) At the effective date of this Act there is hereby established and constituted a three-member Juvenile Board in each of the counties of this State coming within the purview of the provisions of paragraph (2) hereof, to be composed of the County Judge of the county and the District Judges of the Judicial Districts therein. The County Judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) The Juvenile Board created in the foregoing Section is established and constituted in each county wherein there are two (2) District Courts, one of which is composed of one (1) county only, the other of which is composed of two (2) counties; and in such one-county Judicial District there is located a city with a population of not less than 57,500 nor more than 59,000 according to the last preceding federal census.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may, if approved by the Commissioners Court of the county, be compensated by an annual salary not to exceed \$6,000 payable in 12 equal monthly installments; and such compensation shall be in addition to all other compensation now provided for or allowed County and District Judges by law, and shall be paid out of the general fund of the county.

[Acts 1961, 57th Leg., 1st C.S., p. 201, ch. 61, § 1; Acts 1969, 61st Leg., p. 1872, ch. 625, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1851, ch. 542, § 135, eff. Sept. 1, 1971.]

#### Art. 5139E-2. Appointment of Judge of Court of Domestic Relations as Juvenile Board Member in Counties of 75,800 to 78,000

In any county having a population of not less than 75,800 and not more than 78,000 according to the last preceding federal census, the Commissioners Court may name the judge of the court of domestic relations as an additional member of the juvenile board and may

pay him for his services on the board in an amount not to exceed the additional compensation allowed other members of the county juvenile board.

[Acts 1965, 59th Leg., p. 1002, ch. 489, eff. June 16, 1965; Acts 1971, 62nd Leg., p. 1837, ch. 542, § 84, eff. Sept. 1, 1971.]

#### Art. 5139F. Juvenile Board in Counties of 110,000 to 125,500; Additional Compensation

Sec. 1. In any county having a population of more than one hundred and ten thousand (110,000) inhabitants and less than one hundred and twenty-five thousand, five hundred (125,500) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county may each be allowed additional compensation of not less than Six Hundred Dollars (\$600) per annum nor more than Forty-eight Hundred Dollars (\$4800) per annum, which shall be paid in twelve (12) equal installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

Sec. 2. If any portion of this Act is held to be unconstitutional the remaining portion shall, nevertheless, be valid.

Sec. 3. This Act shall be cumulative of existing law and shall not be construed as repealing any law fixing the compensation of the Judge of the District Courts or of County Judges.

[Acts 1951, 52nd Leg., p. 108, ch. 64; Acts 1955, 54th Leg., p. 1162, ch. 445, § 1; Acts 1957, 55th Leg., p. 851, ch. 369, § 1.]

#### Art. 5139G. Juvenile Board in Counties Comprising Special 9th District Court; Additional Compensation

Sec. 1. In each county comprising the Second 9th Judicial District, the judge of the district court or the district courts together with the county judge of the county shall constitute the juvenile board of such county. The members of such board shall be allowed additional compensation not more than Three Thousand Dollars (\$3,000) per annum to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 3. If any portion of this Act is held unconstitutional by a court of competent jurisdiction the remaining portions shall nevertheless be valid the same as if the invalid portion had not been a part hereof.

[Acts 1951, 52nd Leg., p. 768, ch. 419; Acts 1955, 54th Leg., p. 1162, ch. 445, § 1; Acts 1973, 63rd Leg., p. 1371, ch. 524, § 1, eff. June 14, 1973.]

**Art. 5139H. Juvenile Boards in Counties of 12th Judicial District; Additional Compensation**

Sec. 1. In each county comprising the 12th Judicial District, the judge of the district court together with the county judge of the county shall constitute the juvenile board of such county. The members of such board shall be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum and not more than Three Hundred (\$300.00) Dollars per annum to be fixed by the commissioners court and paid monthly in twelve (12) equal installments out of the general fund of the county.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 3. If any portion of this Act is held unconstitutional by a court of competent jurisdiction, the remaining portions shall nevertheless be valid the same as if the invalid portion had not been a part hereof.

[Acts 1951, 52nd Leg., p. 769, ch. 420.]

**Art. 5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts; Additional Compensation**

Sec. 1. In each county comprising the 38th Judicial District and in each county comprising the 63rd Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county may each be allowed additional compensation of not less than Six Hundred Dollars (\$600) per annum and not more than Twelve Hundred Dollars (\$1200) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the General Fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1955, 54th Leg., p. 963, ch. 374.]

**Art. 5139H-2. Juvenile Boards in Counties of Second 38th Judicial District; Additional Compensation**

Sec. 1. In each county comprising the Second 38th Judicial District, the Judge of the District Court together with the County Judge of the county shall constitute the juvenile board of such county. The members of the juvenile board in each such county shall each be allowed additional compensation of not less than One Hundred Dollars (\$100.00) per annum, and not more than Three Hundred Dollars (\$300.00) per annum, which shall be paid in twelve equal installments out of the general fund of the county, such additional compensation to be fixed by the Commissioners Court of the county. Such compensation shall be in ad-

dition to all other compensation now provided or allowed by law for County Judges and District Judges. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, as amended.

Sec. 2. This Act shall become effective on the effective date of House Bill No. 593, Acts of the Regular Session of the 54th Legislature, creating the Second 38th Judicial District.

[Acts 1955, 54th Leg., p. 1177, ch. 456.]

**Art. 5139H-3. Juvenile Boards in Counties of Second 38th Judicial District; Additional Compensation**

Sec. 1. In each county comprising the Second 38th Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than Six Hundred Dollars (\$600) per annum and not more than Twelve Hundred Dollars (\$1200) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1957, 55th Leg., p. 169, ch. 76.]

**Art. 5139H-4. Juvenile Boards in 81st Judicial District; Additional Compensation**

In each county comprising the 81st Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than Three Hundred Dollars (\$300) per annum and not more than Twelve Hundred Dollars (\$1,200) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1959, 56th Leg., p. 995, ch. 463, § 1.]

**Art. 5139H-5. Juvenile Boards in 36th and 156th Judicial Districts; Additional Compensation**

Sec. 1. In each county comprising the 36th Judicial District and in each county comprising the 156th Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members composing each County Juvenile Board within the Judicial Districts may each be allowed addi-

tional compensation of not more than Twelve Hundred Dollars (\$1200) per annum, which shall be paid in twelve (12) equal installments out of the General Fund of each county, such additional compensation to each member of the Board to be fixed by the Commissioners Court of each county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1961, 57th Leg., p. 259, ch. 135.]

#### Art. 5139I. Washington County Juvenile Board

Sec. 1. The county judge of Washington County and the judge of each judicial district which includes Washington County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court for Washington County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation not to exceed Six Hundred Dollars (\$600) per year, to be fixed by the Commissioners Court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1953, 53rd Leg., p. 589, ch. 231.]

#### Art. 5139J. Juvenile Boards in Harrison and Rusk Counties

Sec. 1. There is hereby established a county juvenile board in each of the Counties of Harrison and Rusk, which shall be composed of the county judge and the judge of each judicial district which includes the county. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per year, to be fixed by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 3a. The juvenile board of Harrison County may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Six Thousand Dollars (\$6,000) per year, and whose allowance for expenses shall not be less than Six Hundred Dollars (\$600) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars (\$3,000) per year nor more than Six Thousand Dollars (\$6,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. The juvenile officer shall have the powers and duties prescribed by Article 5142, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the amount authorized to be paid to such officer by this Section.

[Acts 1955, 54th Leg., p. 385, ch. 106; Acts 1959, 56th Leg., p. 1018, ch. 470, §§ 1 to 3; Acts 1967, 60th Leg., p. 983, ch. 427, § 1, eff. June 12, 1967; Acts 1969, 61st Leg., p. 1055, ch. 348, § 1, eff. May 27, 1969.]

#### Art. 5139K. Waller County Juvenile Board

Sec. 1. The County Judge of Waller County and the Judge of the Judicial District which includes Waller County shall constitute the Juvenile Board of that county. The Judge of the court which is designated as the Juvenile Court of Waller County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon them, the County and District Judges who are members of such Board may be allowed additional compensation not to exceed Six Hundred Dollars (\$600) per year, to be fixed by the Commissioners Court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of Judges of the District courts and County Judges.

[Acts 1955, 54th Leg., p. 735, ch. 264.]

#### Art. 5139L. Fannin County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Fannin County, which shall be known as the Fannin County Juvenile Board. It shall be composed of the county judge of Fannin County and the judge of each judicial district which includes Fannin County. The judge of the court which is designated as the juvenile court for Fannin County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. The commissioners court of Fannin County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 2A. The board may appoint a juvenile officer who shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 859, ch. 322; Acts 1971, 62nd Leg., p. 903, ch. 129, § 1, eff. May 10, 1971.]

#### Art. 5139M. Bowie County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in the County of Bowie which shall be composed of the County Judge and the Judge of each Judicial District which includes the County. The official title of the Board shall be the "Bowie County Juvenile Board." The Judge of the Court which is designated as the Juvenile Court of the County

shall be Chairman of the Board and its Chief Administrative Officer.

Sec. 2. As compensation for the added duties imposed upon members of the Juvenile Board each member thereof may be allowed additional compensation not less than Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of the County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Juvenile Board established by this Act shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The Board may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of the County in an amount not to exceed Six Thousand Dollars (\$6,000) per year, and whose allowance for expenses shall not exceed One Thousand Dollars (\$1,000) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer.

[Acts 1955, 54th Leg., p. 897, ch. 348; Acts 1969, 61st Leg., p. 1759, ch. 584, § 1, eff. June 10, 1969.]

#### Suspension

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \*"*

*"Sec. 6. \* \* \*"*

*(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See article 5139 EEE.*

#### Art. 5139N. Cass County Juvenile Board

Sec. 1. There is hereby established the Cass County Juvenile Board, which shall be composed of the County Judge of Cass County and the Judge of each Judicial District which includes Cass County. The Judge of the Court which is designated as the Juvenile Court for Cass County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional

compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1800) per year, to be fixed by the Commissioners Court of Cass County and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Cass County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a juvenile officer for Cass County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Cass County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Cass County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 1203, ch. 478.]

#### Suspension

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \*"*

*"Sec. 6. \* \* \**

*(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See article 5139 EEE.*

#### Art. 5139O. Titus County Juvenile Board

Sec. 1. There is hereby established the Titus County Juvenile Board, which shall be composed of the County Judge of Titus County and the Judge of each Judicial District which includes Titus County. The Judge of the Court which is designated as the Juvenile Court for Titus County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six

Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of Titus County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Titus County Juvenile Board shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. If the Juvenile Board determines that it is necessary to have a juvenile officer for Titus County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Titus County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Titus County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 1206, ch. 480.]

#### Suspension

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \*"*

*"Sec. 6. \* \* \**

*(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See article 5139 EEE.*

#### Art. 5139P. Jefferson County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in the County of Jefferson, which shall be composed of the County Judge and the judges of the several District Courts and the Criminal District Court within such county. The judge of the court which is designated as the Juvenile Court for Jefferson County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon the members of such Juvenile Board, each member thereof may receive annually, payable in monthly installments, an

amount not to exceed Five Thousand Dollars (\$5,000.00), such compensation to be fixed by the Commissioners Court of such county, and to be paid by said county out of the general fund. Such compensation shall be for all judicial and administrative services now rendered by them and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of state revenues; and provided further, that no District Judge who shall be a member of such Juvenile Board shall receive from any county funds, as supplemental pay to his salary from the state, a sum in excess of Five Thousand Dollars (\$5,000.00), per annum, from the county, for judicial and administrative duties assigned to them.

Sec. 3. The Juvenile Board established by this Act shall have all the powers conferred on Juvenile Boards created under Article 5142-C of the Revised Civil Statutes of Texas, and any amendments thereto.

[Acts 1957, 55th Leg., p. 144, ch. 63.]

#### Art. 5139Q. Midland County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in and for Midland County, which shall be composed of the county judge and the judge of each judicial district which includes Midland County. The official title of the board shall be the Midland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon the members of the board, the Commissioners Court of the county may allow the chairman of the board additional compensation in an amount not to exceed Three Thousand Dollars (\$3000) per year, and may allow each other member of the board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1200) per year, to be paid monthly in twelve equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Six Thousand Dollars (\$6000) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer

shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 199, ch. 87.]

#### Art. 5139R. Panola County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Panola County, which shall be composed of the county judge and the judge of each judicial district which includes Panola County. The official title of the board shall be the Panola County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of the juvenile board, each member thereof may be allowed additional compensation not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 368, ch. 173.]

#### Art. 5139S. Hamilton County Juvenile Board

Sec. 1. The County Judge of Hamilton County and the Judge of the Judicial District which includes Hamilton County shall constitute the Juvenile Board of that county. The Judge of the court which is designated as the Juvenile Court of Hamilton County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed

\$1,200 per year, to be fixed by the commissioners court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1957, 55th Leg., p. 432, ch. 207; Acts 1965, 59th Leg., p. 316, ch. 148, § 1.]

#### Art. 5139T. Juvenile Boards in Angelina, Cherokee and Nacogdoches Counties

Sec. 1. The County Commissioners Courts of Angelina, Cherokee, and Nacogdoches are hereby authorized to establish County Juvenile Boards in their respective counties. The County Juvenile Board shall be composed of the county judge and the judges of each of the judicial districts which includes the county. The official title of the Board in each county shall be the name of the county, followed by the words "County Juvenile Board". The judge of the court which is designated as the juvenile court of the county shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon the members of each Juvenile Board, each member thereof may be allowed additional compensation not to exceed Forty-eight Hundred Dollars (\$4800.00) per year, to be fixed by the Commissioners Court of the County, and paid monthly in twelve (12) equal installments out of the general fund or any available fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges and shall not be counted as fees of office.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation for judges of district courts and county judges.

[Acts 1957, 55th Leg., p. 529, ch. 246; Acts 1971, 62nd Leg., p. 1191, ch. 290, § 1, eff. May 19, 1971.]

#### Art. 5139U. Waller County Juvenile Board

Sec. 1. The Juvenile Board of Waller County shall be composed of the Judge of the 9th Judicial District, the Judge of the County Court of Waller County and a citizen of Waller County, which citizen shall be appointed by the County Commissioners Court of Waller County for a period of two (2) years.

Sec. 2. Each member of the Juvenile Board of Waller County shall receive as compensation for his service a sum not to exceed Twelve Hundred Dollars (\$1200) per year, to be fixed by Commissioners Court and paid in twelve (12) equal installments, out of the general fund of the County.

Sec. 3. Except for provisions on membership and compensation, the Juvenile Board of Waller County shall be governed by the general laws of Texas.

[Acts 1957, 55th Leg., p. 568, ch. 267.]

#### Art. 5139V. Juvenile Boards in Hardin and Tyler Counties

Sec. 1. There is hereby established a county juvenile board in each of the Counties of Hardin and Tyler, which shall be composed of the county judge and the judge of each judicial district which includes the county. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation of not more than Five Thousand Dollars (\$5,000) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200) per year, and whose allowance for expenses shall not exceed Three Hundred Dollars (\$300) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 817, ch. 347; Acts 1973, 63rd Leg., p. 241, ch. 116, § 1, eff. May 18, 1973.]

#### Art. 5139W. Lamar County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Lamar County, which shall be known as the Lamar County Juvenile Board. It shall be composed of the county judge of Lamar County and the judge of each judicial district which includes Lamar County. The judge of the court which is designated as the juvenile court of Lamar County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dol-



lars (\$1200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. The Commissioners Court of Lamar County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[Acts 1957, 55th Leg., p. 831, ch. 359.]

#### Art. 5139X. Winkler County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Winkler County, which shall be known as the Winkler County Juvenile Board. It shall be composed of the county judge of Winkler County and the judge of each judicial district which includes Winkler County. The judge of the court which is designated as the juvenile court for Winkler County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1,200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Winkler County. The Commissioners Court of Winkler County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1,200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Winkler County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1957, 55th Leg., p. 866, ch. 382.]

#### Art. 5139Y. Nolan County Juvenile Board

Sec. 1. There is established a juvenile board for Nolan County to be called the "Nolan County Juvenile Board", which shall be composed of a total of seven (7) non-salaried members, two (2) members appointed by the Nolan County Commissioners Court, two (2) members appointed by the Sweetwater City Commission, two (2) members appointed by the Board of Trustees of the Sweetwater Independent School District, and one member appointed by the above-named six. The juvenile board shall annually elect, by majority vote, a chairman who shall preside over meetings to be scheduled by the board.

Sec. 2. The Nolan County Juvenile Board shall have all the powers conferred on Juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer for Nolan County, it may appoint a juvenile officer for a term not to exceed two (2) years, at the end of which term, the board may appoint another juvenile officer for succeeding terms not exceeding two (2) years for each term. No person shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person appointed as juvenile officer shall be a person trained and qualified in the field of juvenile and parental counseling, truancy and law enforcement. The juvenile officer shall have all the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the board and shall receive an annual allowance for expenses in an amount to be determined by the board.

Sec. 4. The Commissioners Court of Nolan County may enter into an agreement with the City Commission of Sweetwater and the Board of Trustees of the Sweetwater Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile officer. The agreement shall provide that the Commissioners Court of Nolan County, the City Commission of Sweetwater, and the Board of Trustees of the Sweetwater Independent School District each furnish equal, one-third ( $\frac{1}{3}$ ) shares of the funds necessary for the payment of the salary and expenses of the juvenile officer.

[Acts 1959, 57th Leg., p. 32, ch. 20; Acts 1969, 61st Leg., p. 391, ch. 143, § 1, eff. May 6, 1969].

#### Art. 5139Z. Andrews County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County and the judge of each judicial district which includes Andrews County. The judge of the court which is designated as the juvenile court for Andrews County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200.00) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. The Commissioners Court of Andrews County may allow each other member

of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200.00) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1959, 56th Leg., p. 145, ch. 86.]

#### Art. 5139AA. Marion County Juvenile Board

Sec. 1. There is hereby established the Marion County Juvenile Board, which shall be composed of the County Judge of Marion County and the Judge of the 76th Judicial District. The Judge of the Court which is designated as the Juvenile Court for Marion County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of Marion County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Marion County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a Juvenile Officer for Marion County, it may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of Marion County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Juvenile Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court of Marion County shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer.

[Acts 1959, 56th Leg., p. 188, ch. 106; Acts 1969, 61st Leg., p. 519, ch. 181, § 5, eff. May 9, 1969.]

#### Art. 5139BB. Liberty County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County and one (1) citizen of

Liberty County, which citizen shall be appointed by the County Commissioners Court of Liberty County for a period of two (2) years. The official title of the board shall be the Liberty County Juvenile Board. The judge of the County Court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of the juvenile board, each member thereof may be allowed additional compensation not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen member of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of said Liberty County in an amount not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. The same person may serve as the juvenile officer and the citizen member of the Liberty County Juvenile Board; however, if the citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer.

[Acts 1959, 56th Leg., p. 480, ch. 209.]

#### Art. 5139CC. Hunt County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of each judicial district which includes Hunt County, and four non-salaried members who are citizens of Hunt County, two to be appointed by the county judge and one by each district judge. The terms of office of the non-salaried appointed members of the Board are for alternating terms of two years each. The terms of two of the non-salaried appointed members expire on December 31st of each odd-numbered year, and the terms of the remaining two non-

salaried appointed members expire on December 31st of each even-numbered year.

Sec. 2. The official title of said Board shall be the "Hunt County Juvenile Board."

Sec. 3. The judge of the court which is designated as the juvenile court for Hunt County shall be chairman of the Board and its chief administrative officer. The Hunt County Juvenile Board shall have all the powers conferred upon Juvenile Boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 4. As compensation for the added duties imposed upon the judicial members of the Juvenile Board, the county and district judges may be allowed additional compensation not to exceed Twelve Hundred Dollars (\$1,200) per year, and the clerk of the juvenile court may be allowed additional compensation not to exceed Eight Hundred Dollars (\$800) per year. Any additional compensation allowed shall be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for the county judges, district judges, and clerk of the juvenile court and shall not be counted as fees of office. Each other member of the Board serves without compensation. This Act shall be cumulative of existing laws relating to compensation for judges of district courts, county judges, and clerks of juvenile courts. [Acts 1959, 56th Leg., p. 662, ch. 305; Acts 1967, 60th Leg., p. 950, ch. 418, § 1, eff. June 12, 1967.]

#### Art. 5139DD. Gray County Juvenile Board

Sec. 1. There is hereby established the Gray County Juvenile Board, which shall be composed of the county judge of Gray County and the judge of each judicial district which includes Gray County. The county judge of said county shall be chairman of said Board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such Board may be allowed additional compensation not to exceed Two Thousand, Four Hundred Dollars (\$2,400.00) per year, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Gray County. The commissioners court of Gray County may allow each other member of the Board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200.00) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Gray County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[Acts 1959, 56th Leg., p. 742, ch. 336.]

#### Art. 5139EE. Crane County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in and for Crane County, which shall be composed of the county judge and the judge of each judicial district which includes Crane County. The official title of the board shall be the Crane County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon the members of the board the Commissioners Court of the County may allow the chairman of the board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200) per year, and may allow each other member of the board additional compensation in an amount not to exceed Six Hundred Dollars (\$600) per year, to be paid monthly in twelve (12) equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Five Thousand, Four Hundred Dollars (\$5,400) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1959, 56th Leg., p. 919, ch. 423.]

#### Art. 5139FF. Hutchinson County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in and for Hutchinson County, which shall be composed of a total of five (5) nonsalaried members, one member the Judge of the Court of Domestic Relations in and for Hutchinson County, one member the Judge of the Judicial District which includes Hutchinson County, one member the Judge of the County Court of Hutchinson County, one member appointed by the Hutchinson County Commissioners Court and one member appointed by the Borger Bar Association. The appointed members of the board shall be appointed for a term not to exceed one year. The official title

of the board shall be the Hutchinson County Juvenile Board. The Judge of the Court of Domestic Relations in and for Hutchinson County shall be the chairman of the board and its chief administrative officer.

Sec. 2. The Hutchinson County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board shall appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court.

Sec. 3. If the board determines that it is desirable to have one or more assistant juvenile officers it may appoint such assistant juvenile officers whose salaries shall be set by the Commissioners Court. All appointments made by the Hutchinson County Juvenile Board shall be made subject to the approval of the Commissioners Court of Hutchinson County. If the Commissioners Court fails to approve within thirty (30) days any appointment made by the juvenile board, the appointee is automatically approved. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1959, 56th Leg., 2nd C.S., p. 157, ch. 37; Acts 1969, 61st Leg., p. 1758, ch. 583, § 1, eff. June 10, 1969.]

#### Art. 5139GG. Howard County Juvenile Board

Sec. 1. There is established a juvenile board for Howard County to be called the "Howard County Juvenile Board," which shall be composed of a total of seven (7) non-salaried members, the County Judge of Howard County being one (1) member and chairman of such Board, and being further composed of two (2) members appointed by the Howard County Commissioners Court, two (2) members appointed by the Big Spring City Commission, and two (2) members appointed by the Board of Trustees of the Big Spring Independent School District. The terms of office of the members of this Board appointed by the Commissioners Court, city commission, and school district shall be for alternating terms of two (2) years each. The terms of three (3) of the appointed members (one (1) each from the city, county, and school district) will expire on December 31st of each odd-numbered year, and the terms of the remaining three (3) appointed members (one (1) each from the city, county,

and school district) will expire on December 31st of each even-numbered year. (It is understood that the original appointments of three (3) members will expire on December 31, 1961, and that the remaining three (3) appointments will expire on December 31, 1962.)

Sec. 2. The Howard County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the Board determines that it is desirable to have a juvenile officer and/or officers for Howard County, it may appoint a juvenile officer and/or officers for a term not to exceed two (2) years, at the end of which term, the Board may appoint another juvenile officer or officers for succeeding terms not exceeding two (2) years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling. The juvenile officer shall have all the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the Board, and shall receive an annual allowance for expenses in an amount to be determined by the Board.

Sec. 4. The commissioners court of Howard County may enter into an agreement with the city commission of Big Spring and the Board of Trustees of the Big Spring Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department. The agreement shall provide that the commissioners court of Howard County pay forty per cent (40%); that the city commission of Big Spring pay forty per cent (40%); and that the Board of Trustees of the Big Spring Independent school District pay twenty per cent (20%) of the funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

[Acts 1961, 57th Leg., p. 102, ch. 56.]

#### Art. 5139HH. Morris County Juvenile Board

Sec. 1. There is hereby established the Morris County Juvenile Board, which shall be composed of the county judge of Morris County and the judge of each judicial district which includes Morris County. The judge of the court which is designated as the juvenile court for Morris County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such juvenile board, each member thereof may be allowed additional compensation not to exceed Eighteen Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of Morris County

and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Morris County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. If the juvenile board determines that it is necessary to have a juvenile officer for Morris County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Morris County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Morris County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1961, 57th Leg., p. 256, ch. 132.]

#### Suspension

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \*"*

*"Sec. 6. \* \* \**

*(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See article 5139EEE.*

#### Art. 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties

Sec. 1. There are hereby established juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties, each of which shall be composed of the county judge of the county and the district judge of one of the two judicial districts comprised of these five (5) counties, as the commissioners court in each county shall determine.

Sec. 2. As compensation for the added duties hereby imposed upon them, members of the juvenile boards in Comal, Hays, and Caldwell Counties may each be allowed additional compensation of not more than \$300 per annum; members of the juvenile boards of Fayette and Austin Counties may each be allowed additional compensation of not more than \$1,200 per

annum. The additional compensation shall be paid monthly in twelve (12) equal installments out of the general fund or other available fund of the county concerned. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. The juvenile boards created by this Act shall have all the powers conferred upon juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[Acts 1961, 57th Leg., p. 312, ch. 163; Acts 1967, 60th Leg., p. 872, ch. 377, § 1, eff. June 8, 1967; Acts 1971, 62nd Leg., p. 1783, ch. 523, § 1, eff. June 1, 1971.]

#### Art. 5139JJ. Victoria County Juvenile Board

Sec. 1. There is hereby established a juvenile board in Victoria County, which shall be composed of the county judge of Victoria County, the judge of each judicial district which includes Victoria County, and the judge of the County Court at Law of Victoria County. The judge of the court which is designated the juvenile court for Victoria County shall be chairman of the board and its chief administrative officer. The board may designate a district court, the county court, or a county court at law with juvenile jurisdiction to be the juvenile court of the county. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 2. As compensation for the additional duties hereby imposed, each member of the juvenile board shall be allowed additional compensation, to be fixed by the Commissioners Court and paid in twelve (12) equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. The Commissioners Court of Victoria County may appoint a chief probation officer and such other personnel as may be necessary for the proper functioning of the probation department. Salaries of the personnel of the county probation department shall be fixed by the Commissioners Court. The Commissioners Court of Victoria County shall provide the necessary funds for payment of salaries and expenses essential to the proper operation of the probation department. The Commissioners Court may also allow additional compensation to the county clerk of Victoria County for the added duties imposed upon him as clerk of the juvenile court.

[Acts 1961, 57th Leg., p. 371, ch. 187; Acts 1971, 62nd Leg., p. 1012, ch. 198, § 1, eff. May 13, § 1; Acts 1973, 63rd Leg., p. 412, ch. 183, § 8, eff. May 25, 1973.]

#### Art. 5139KK. Travis County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in and for the County of Travis, to be known as Travis County Juvenile

Board, hereinafter referred to as Juvenile Board, which Juvenile Board shall be composed of the County Judge and the Judges of the several Civil District Courts, and the Criminal District Courts in and for Travis County.

Sec. 2. As compensation for the added duties imposed upon the members of the Juvenile Board, each member thereof shall receive the sum of Forty-eight Hundred Dollars (\$4800.00) annually, to be paid in equal monthly installments out of the general fund of said county. Such compensation shall be for all judicial and administrative services thereafter to be assigned to them as members of the Juvenile Board, and shall be in addition to all other compensation allowed or hereafter to be allowed by law for County Judges and District Judges.

Sec. 3. The Juvenile Board may appoint a discreet person of good moral character to serve as Chief Probation Officer. The Chief Probation Officer shall appoint assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the Juvenile Board. The number of such assistant probation officers and other assistants shall be determined by the Juvenile Board. The Juvenile Board shall fix the salaries of and allowances for the said Chief Probation Officer, assistant probation officers and other assistants, and the Commissioners Court for said county shall provide the necessary funds for the payment of such salaries and operating expenses in the amounts fixed by the Juvenile Board, subject to the approval of the Commissioners Court. All claims for expenses of the Chief Probation Officer, the assistant probation officers and other assistants, shall be certified by the Chairman of the Juvenile Board to the said County Commissioners Court as being necessary in the performance of the duties of such officers, and the Commissioners Court shall out of the general fund provide funds for the payment of all expenses necessary to carry out the duties of the Chief Probation Officer in such amounts as fixed by the Juvenile Board, as certified by the Chairman of the Juvenile Board, subject to the approval of the Commissioners Court. The Chief Probation Officer, assistant probation officers, and other assistants, may be removed at any time by the authority appointing them.

Sec. 4. The Chief Probation Officer, in addition to his other duties, shall, if the Juvenile Board so directs, receive payments of moneys made under the orders of the several district courts and criminal district courts in said county, and/or payments made voluntarily, for the support of dependents, wives and children, and shall disburse said funds for the benefit of the wife and/or children of the person making such payment in such manner, by an order duly entered, as shall appear to the said courts to be for the best interest of said wife and/or children. The Chief Probation Officer shall enter into a bond payable to the

judges of the several district courts and criminal district courts, and their successors, with a corporate surety authorized to make such a bond in the State of Texas, conditioned upon the faithful performance of the duties of his position, and further conditioned upon his proper accounting for any moneys received by him, said bond to be in such amount as may be fixed by the Juvenile Board and subject to the approval of the Commissioners Court, the premium for such bond to be paid out of the general funds of the county. The Chief Probation Officer shall cause to be kept an accurate and complete record of all receipts and disbursements of moneys received and disbursed for the benefit of dependents, wives and children, which records shall be court records and shall be open to inspection at all reasonable times by the parties, their representatives and attorneys; and certified or attested copies of such records shall be admitted and received as evidence as is provided for public records by Article 3720 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. It shall be the duty of the county auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the Juvenile Board. Subject to confirmation by the Juvenile Board, the Chief Probation Officer shall appoint such assistants as may be necessary to effect the directions of the Juvenile Board regarding his duties to receive and to disburse funds paid for the support of dependents; and such assistants may be designated by titles appropriately descriptive of their duties. Such assistants may be removed by the appointing authority at any time. The Commissioners Court of said county shall provide out of the general funds of the county, in such amounts as are recommended by the Juvenile Board, subject to the approval of the Commissioners Court, the funds necessary to employ assistants and to operate and maintain facilities for receiving and disbursing wife and child support payments.

Sec. 5. The Chief Probation Officer shall appoint the Superintendents of each county institution maintained for the detention, shelter, training, education, or correction of juveniles. Such appointment shall be confirmed by the Juvenile Board and the salary of the Superintendents and the expenses of maintaining and operating such institutions shall be paid out of the general fund by the Commissioners Court in such amounts as recommended by the Juvenile Board, subject to the approval of the Commissioners Court. The Superintendents may be removed by the appointing authority at any time.

Sec. 6. The said Chief Probation Officer and Assistant Probation Officers shall have the authority, powers and duties authorized and required by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[Acts 1961, 57th Leg., p. 372, ch. 188.]

**Art. 5139LL. Repealed by Acts 1962, 57th Leg., 3rd C.S., p. 171, ch. 64, § 19, eff. Sept. 1, 1962**

**Art. 5139MM. Dawson County Juvenile Board**

Sec. 1. There is hereby established a juvenile board in Dawson County, which shall be composed of the county judge of Dawson County and two (2) citizens of Dawson County, one of whom shall be appointed by the Commissioners Court and the other by the chief of police of the City of Lamesa. Citizen members of the board shall serve for terms of two (2) years. The county judge shall be the chairman of the juvenile board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such juvenile board may be allowed additional compensation of not less than Six Hundred Dollars (\$600.) nor more than Three Thousand Dollars (\$3,000.) per annum, which shall be paid monthly in twelve (12) equal installments out of the general fund or other available fund of Dawson County. The Commissioners Court of Dawson County may allow each other member of the board compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200.) per annum, to be paid monthly in twelve (12) equal installments out of the general fund or other available fund of Dawson County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by citizen members of the juvenile board.

Sec. 3. The juvenile board created by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Dawson County in an amount not to exceed Six Thousand, Four Hundred Dollars (\$6,400.) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer, and the Commissioners Court of Dawson County shall provide the necessary funds for the payment of the salary and expenses of the juvenile officer. The same person may serve as the juvenile officer and as one of the citizen members of the Dawson County Juvenile Board, but in such case he shall receive only the compensation fixed for the juvenile officer. [Acts 1961, 57th Leg., p. 885, ch. 388; Acts 1971, 62nd Leg., p. 1627, ch. 454, § 1, eff. May 26, 1971.]

**Art. 5139NN. Coleman County Juvenile Board**

Sec. 1. There is hereby established a Juvenile Board for Coleman County, which shall be

known as the Coleman County Juvenile Board. It shall be composed of the county judge of Coleman County and the judge of each judicial district which includes Coleman County. The judge of the court which is designated as the juvenile court for Coleman County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Coleman County. The Commissioners Court of Coleman County may allow each other member of the board additional compensation in an amount not to exceed Three Hundred Dollars (\$300) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Coleman County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 2a. The Juvenile Board of Coleman County shall, with the consent of the county commissioners court, appoint a juvenile officer for Coleman County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary as fixed by the juvenile board and approved by the county commissioners court.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges. [Acts 1961, 57th Leg., 1st C.S., p. 196, ch. 57; Acts 1969, 61st Leg., p. 263, ch. 102, §§ 1, 2, eff. Sept. 1, 1969.]

**Art. 5139OO. Runnels County Juvenile Board**

Sec. 1. There is hereby established a juvenile board for Runnels County, which shall be known as the Runnels County Juvenile Board. The Board shall be composed of the county judge of Runnels County, and the district attorney and presiding judge of the 119th Judicial District. The judge of the court which is designated as the juvenile court for Runnels County shall be chairman of the Board and its chief administrative officer. The Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such Board may be allowed by the Commissioners Court additional compensation in an amount not to exceed Six Hundred Dollars (\$600) per annum, which shall be paid in twelve (12) equal installments out of the Gen-

eral Fund or any other available fund of Runnels County. The Commissioners Court of Runnels County may allow each other member of the Board additional compensation in an amount not to exceed Three Hundred Dollars (\$300) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Runnels County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges, district judges, and district attorneys.

Sec. 2A. The Juvenile Board of Runnels County shall, with the consent of the County Commissioners Court, appoint the Juvenile and Probation Officer of Runnels County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State, and who shall act as the Juvenile and Adult Probation Officer in Runnels County for the Juvenile Board and the Juvenile Court, for the courts of Runnels County having original jurisdiction of felony criminal actions. The Juvenile and Probation Officer shall be paid a salary as fixed by the Juvenile Board and approved by the County Commissioners Court.

[Acts 1962, 57th Leg., 3rd C.S., p. 203, ch. 78; Acts 1963, 58th Leg., p. 839, ch. 319, § 1.]

#### Art. 5139PP. Bell County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Bell County, which shall be known as the Bell County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county, the county judge of Bell County, and the judge of the County Court at Law of Bell County. The county judge of Bell County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon members of such board, each member thereon may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court of the county, payable in twelve (12) equal monthly installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county, county court at law, and district judges.

[Acts 1963, 58th Leg., p. 322, ch. 120; Acts 1972, 62nd Leg., 4th C.S., p. 21, ch. 4, § 1, eff. Oct. 17, 1972.]

#### Art. 5139QQ. Bosque County Juvenile Board

Sec. 1. The county judge of Bosque County and the judge of the judicial district which includes Bosque County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Bosque County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$1,200 per year, to be fixed by the commissioners court and paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 315, ch. 146.]

#### Art. 5139RR. Comanche County Juvenile Board

Sec. 1. The county judge of Comanche County and the judge of the judicial district which includes Comanche County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Comanche County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$1,800 per year, to be fixed by the commissioners court and paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 315, ch. 147.]

#### Art. 5139SS. Coryell County Juvenile Board

Sec. 1. The county judge of Coryell County and the judge of the judicial district which includes Coryell County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Coryell County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$2,400 per year, to be fixed by the commissioners court and paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 317, ch. 149.]

#### Art. 5139TT. Hidalgo County Juvenile Board

##### Juvenile Board

Sec. 1. The Hidalgo County Juvenile Board is composed of the County Judge of Hidalgo County and the judge of each judicial district which includes Hidalgo County.

##### Compensation of Board Members

Sec. 2. (a) As compensation for the added duties imposed upon members of the juvenile



board, each member thereof may be allowed additional compensation of not more than \$8,000 per year, to be fixed by the commissioners court of the county and paid monthly in 12 equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

(b) The commissioners court may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

**Board Powers**

Sec. 3. The juvenile board may

(1) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(2) suspend or remove any employee at any time for good cause;

(3) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(4) authorize the use of foster homes for the temporary care of delinquent, dependent, or neglected children;

(5) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made.

**Board Duties**

Sec. 4. The juvenile board shall

(1) prescribe the duties and conditions of employment of its employees;

(2) control and supervise all homes, schools, farms and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support or correction of juveniles;

(3) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support or correction of juveniles;

(4) designate the juvenile court in accordance with Chapter 204, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 2338-1, Vernon's Texas Civil Statutes);

(5) submit an annual proposed budget to the Hidalgo County Commissioners Court.

**Powers of Juvenile Probation Officer**

Sec. 5. The juvenile probation officer has all the powers of a peace officer for the purpose of performing his duties under this Act.

**Duties of Juvenile Probation Officer**

Sec. 6. The juvenile probation officer shall

(1) appoint assistant juvenile probation officers with the approval of the juvenile board;

(2) appoint, with the approval of the juvenile board, a minimum of one field worker for each 50,000 inhabitants of Hidalgo County according to the last preceding federal census;

(3) investigate all cases referred to him by the board;

(4) investigate all cases brought before the juvenile court;

(5) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(6) represent the interest of the juvenile before the juvenile court;

(7) furnish the board and the juvenile court any information and assistance required by them;

(8) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information which may assist the court in determining the proper disposition to be made of any juvenile;

(9) keep a record which will at all times show the names of all referrals and delinquent juveniles within Hidalgo County and the names and addresses of the persons having custody of them.

**Salaries and Financing**

Sec. 7. The commissioners court shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1965, 59th Leg., p. 383, ch. 186; Acts 1973, 63rd Leg., p. 1387, ch. 535, § 1, eff. June 14, 1973.]

**Art. 5139UU. Ector County Juvenile Board**

Sec. 1. There is established the Ector County Juvenile Board, which shall be composed of the judge of the Juvenile Court of Ector County, the county judge of Ector County, and the judges of the district courts of Ector County. The judge of the Juvenile Court of Ector County, who is also the judge of the County Court at law of Ector County as provided by Section 1, Chapter 331, Acts of the 56th Legislature, Regular Session, 1959 (Article 2338-12, Vernon's Texas Civil Statutes), is chairman of the board.

Sec. 2. The county judge of Ector County, the judge of the County Court at Law of Ector County, and the judges of the district courts of Ector County are each entitled to additional compensation of their service on the board of

not less than \$600 a year nor more than \$1,200 a year. The amount of such additional compensation shall be fixed by the commissioners court and shall be paid in 12 equal monthly installments out of the general fund of the county.

Sec. 3. The Ector County Juvenile Board has all the powers and duties prescribed for juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. The judge of the juvenile court may appoint a chief juvenile probation officer, subject to the approval of the Ector County Juvenile Board, for a term of 2 years. Subject to the approval of the judge of the juvenile court and the Ector County Juvenile Board, the chief juvenile probation officer may appoint one juvenile probation officer for each 25,000 population in the county, according to the last preceding federal census; a psychologist to serve as juvenile probation officer psychologist for the county; and such additional juvenile officers and juvenile probation officers as the Ector County Juvenile Board may determine to be necessary, each for a term of 2 years. The Ector County Juvenile Board shall recommend the salaries to be paid to the officers, without limitation as to the amount of the salary, and the commissioners court shall approve the salaries for the officers and provide the funds for their expenses. The salaries for the officers shall be paid in 12 equal monthly installments by the county.

Sec. 5. The chief juvenile probation officer and such officers as he may appoint with the approval of the Ector County Juvenile Board have the powers and duties prescribed for juvenile officers by Article 5142 of the Revised Civil Statutes of Texas, 1925, as amended. Such officers shall take the oath to perform their duties, and the oath and appointment of such officers shall be filed in the office of the county clerk. The Ector County Juvenile Board may require and approve a good and sufficient bond for the faithful performance of duty of any of such officers, payable to the treasurer of Ector County in such sum as may be determined by the Ector County Juvenile Board.

Sec. 6. Subject to the approval of the judge of the Juvenile Court of Ector County, the chief juvenile probation officer may employ one secretary, and may also employ as many additional secretaries as the Ector County Juvenile Board may determine to be necessary, at a salary not to exceed \$6,000 a year for each secretary, which salary shall be recommended by the chief juvenile probation officer and approved by the commissioners court, and paid in 12 equal monthly installments by the county.

Sec. 7. A person appointed or employed under the provisions of this Act may be removed from office by the power appointing him at any time.

Sec. 8. Nothing in this Act shall be construed to affect the status of a person serving as juvenile officer or assistant juvenile officer on the effective date of this Act or to require a new appointment of such officers during their current terms of office.

[Acts 1965, 59th Leg., p. 392, ch. 191, eff. May 17, 1965; Acts 1969, 61st Leg., p. 252, ch. 99, § 1, eff. April 26, 1969.]

## Art. 5139VV. Harris County Juvenile and Child Welfare Boards

### SUBCHAPTER A. THE JUVENILE BOARD

#### Establishment

Sec. 1. The Juvenile Board of Harris County is established.

#### Composition

Sec. 2. The juvenile board consists of the county judge, the judges of the juvenile courts, a judge selected by the judges of those district-level courts hearing primarily family law matters, a judge selected by the judges of those district-level courts hearing primarily civil matters, and a judge selected by the judges of those district-level courts hearing primarily criminal matters.

#### Officers

Sec. 3. The chairman of the board shall be selected from the members of the board at an election to be held annually at the first meeting in January.

#### Meetings

Sec. 4. (a) The board shall hold meetings once a month. It may hold other meetings at the call of the chairman or at the written request to the chairman of at least two members of the board.

(b) The board shall keep accurate and complete minutes of its meetings. The minutes are open to inspection by the public.

#### Duties

Sec. 5. (a) The Chief Probation Officer under the direction of the juvenile board shall prepare the annual budget of the probation department and of the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board then shall submit the budget it approves to the Commissioners Court for final approval in the same manner as prescribed by law for the other agencies and departments of Harris County.

(b) The juvenile board shall make an annual written report to the Commissioners Court concerning the operations and efficiency of the probation department and of the county institutions for the care of neglected, dependent, and delinquent children; and concerning the general adequacy of juvenile services provided by the county. The board may include within its report any recommendations for improvements which it finds are needed.

(c) At the request of the judge of the juvenile court, the juvenile board shall investigate the operations of the probation department and

the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board shall make a written report of the results of its investigations to the Commissioners Court. The juvenile board may make any special studies or investigations that it finds necessary to improve the operations of the probation department and the institutions under its control.

(d) The juvenile board subject to the approval of the Commissioners Court shall establish a general personnel policy for the employees of the probation department and the county institutions for the care of neglected, dependent, and delinquent children. The board shall establish and maintain an employee classification system including:

- (1) an accurate statement of duties of each employee position;
- (2) stated qualifications of each employee position; and
- (3) a compensation plan which will insure equal pay for equal work.

(e) The board neither has, nor may it exercise, judicial power or function.

(f) The juvenile board shall direct whether the district clerk or the chief juvenile probation officer shall receive payments for the support of wives and children made under the order of the district and criminal district courts or the courts of domestic relations of Harris County.

**SUBCHAPTER B. CHIEF JUVENILE PROBATION OFFICER**

**Establishment of Office**

Sec. 6. The office of Chief Juvenile Probation Officer of Harris County is established.

**Appointment**

Sec. 7. The judge of the juvenile court shall appoint the chief juvenile probation officer. The appointment is subject to the approval of the juvenile board. The judge may remove the chief juvenile probation officer at any time subject to the approval of the Juvenile Board.

**Salary**

Sec. 8. The Commissioners Court shall pay the chief juvenile probation officer an annual salary of not less than \$12,000.

**Duties**

Sec. 9. (a) The chief juvenile probation officer is the chief administrative officer of the probation department, and the director of the county institutions for the care of neglected, dependent, and delinquent children.

(b) If the chief juvenile probation officer determines that the juvenile court should acquire formal jurisdiction of a case, he shall prepare and file in the juvenile court a petition as described in Section 7, Chapter 204, Acts of the 48th Legislature, 1943 (Article 2338-1, Vernon's Texas Civil Statutes).

**Support Payments**

Sec. 10. (a) If the juvenile board directs the chief juvenile probation officer to receive payments for the support of wives and children made under the order of the district and criminal district courts or the courts of domestic relations, of Harris County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(b) If the juvenile board directs the district clerk to receive support payments, the clerk shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(c) In all cases in which the juvenile board directs the chief juvenile probation officer to receive support payments, he shall enter into a surety bond with some solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned upon the chief juvenile probation officer's faithful performance of the duties of his position and upon his properly accounting for any moneys entrusted to him. The Commissioners Court shall fix the amount of the bond and shall approve its terms. The Commissioners Court shall pay the premium for the bond out of the general funds of the county.

(d) The chief juvenile probation officer shall keep an accurate and complete record of all his receipts and disbursements of support payment funds. The record is open to inspection by the public. The County Auditor shall inspect the record and shall audit the accounts quarterly, making a report of his findings and recommendations to the juvenile board.

**SUBCHAPTER C. THE PROBATION DEPARTMENT**

**Establishment**

Sec. 11. The Probation Department of Harris County is established.

**Appointment**

Sec. 12. The chief juvenile probation officer shall hire the employees of the probation department. He may remove an employee at any time. Appointments and removals of supervisors are subject to the approval of the juvenile board.

**Salaries**

Sec. 13. The Commissioners Court of Harris County shall pay the salaries and expenses of the employees of the probation department as determined by the annual budget prepared by the juvenile board and approved by the Commissioners Court.

**Duties**

Sec. 14. (a) The juvenile probation officers of Harris County shall

- (1) investigate all cases referred to them by the juvenile court or the juvenile board;

(2) be present in the juvenile court and represent the interests of the juvenile when the case is heard;

(3) furnish to the court and juvenile board any information or assistance required;

(4) take charge of any child before and after the trial; and

(5) perform other services for the child as may be required by the court.

(b) Relative to their offices, the juvenile probation officers of Harris County have the powers and authority of police officers and sheriffs.

(c) The juvenile probation officers of Harris County have all other powers granted to juvenile probation officers by General Law.

#### SUBCHAPTER D. COUNTY JUVENILE INSTITUTIONS

##### Appointment

Sec. 15. The chief juvenile probation officer shall hire the employees of the county institutions for the care of neglected, dependent, and delinquent children. He may remove an employee at any time. The appointment and removal of superintendents of the county institutions are subject to the approval of the juvenile board.

##### Salaries

Sec. 16. The Commissioners Court of Harris County shall pay the salaries and expenses of the employees of the county institutions for the care of neglected, dependent, and delinquent children as determined by the annual budget prepared by the juvenile board and approved by the Commissioners Court.

##### Gifts

Sec. 17. Subject to the approval of the Commissioners Court, the juvenile board may accept and hold in trust for the county juvenile institutions any grant or devise of land, any gift or bequest of money or other personal property, and any donation, which is to be applied for the benefit of the institutions.

Secs. 18, 19 [Severability and emergency clauses]

#### SUBCHAPTER E. HARRIS COUNTY CHILD WELFARE BOARD

##### Definitions

Sec. 20. In this subchapter, unless the context requires a different definition:

(1) "Board" means the Harris County Child Welfare Board.

(2) "Commissioners court" means the Commissioners Court of Harris County.

(3) "Harris County Child Welfare Unit" means the administrative organization carrying out the functions of the Harris County Child Welfare Board.

(4) "Director of the Harris County Child Welfare Unit" means the highest ad-

ministrative officer of the Harris County Child Welfare Unit who is responsible to the Harris County Child Welfare Board.

(5) "Assistant director" means one or more administrative officers who are next in authority to the Director of the Harris County Child Welfare Unit.

(6) "Institution for the care and protection of dependent and neglected children" means one or more facilities designed for the care and protection of children described in Article 2330, Revised Civil Statutes of Texas, 1925, as amended, and does not include any institution designed primarily for holding and caring for children with severe medical, psychiatric, or other handicaps including severe mental retardation, serious abnormality, or incurable or debilitating disease which requires hospital care or intensive specialized treatment or any institution designed primarily for receiving or holding and caring for incorrigible or delinquent children.

##### Authority of Board Over Certain Institutions

Sec. 21. On approval of the Commissioners Court of Harris County, the Harris County Child Welfare Board created under Section 4, Chapter 194, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 695a, Vernon's Texas Civil Statutes), may assume jurisdiction, management, and control over and may determine operating policies for any county owned institution for the care and protection of dependent and neglected children.

##### Transfer of Functions

Sec. 22. With respect to any institution for the care of dependent and neglected children over which the board has assumed control and management, the board shall perform the following functions formerly performed by the Harris County Juvenile Board and Chief Juvenile Probation Officer of Harris County:

(1) hire and remove employees of the institutions;

(2) establish a general personnel policy for employees of the institutions;

(3) pay the salaries and expenses of the employees of the institutions from funds supplied by the commissioners court under the annual budget or a supplemental budget approved by the board and the commissioners court or from funds supplied by the state or other sources;

(4) designate the Director of the Harris County Child Welfare Unit or his specially designated assistant as the director of one or more of the institutions;

(5) make an annual written report to the commissioners court concerning the operations and efficiency of the institutions; and

(6) prepare an annual budget for the institutions and submit it to the commission-

ers court for final approval as provided by law for other agencies and departments of Harris County.

**Duties**

Sec. 23. (a) In addition to but not in limitation of any authority which may be delegated to the board by the commissioners court and the State Department of Public Welfare, the board may perform the following functions:

(1) disburse funds made available to the board from sources other than the commissioners court and the State Department of Public Welfare to aid in the care, protection, evaluation, training, treatment, education, recreation, or benefit of dependent and neglected children and refuse to accept or return all or part of any funds considered by the board to be for a purpose which is inappropriate to, burdensome on, incompatible with, or unsuited to board policies or administration of the child care program;

(2) accept and use any gift, grant, devise, or bequest of land, money, or personal property or any beneficial interest or financial support under the terms of a trust or from any lawful source, and may hold these either directly or in trust for the use of the dependent and neglected children of the county or for institutions or services provided for the care, protection, education, or training of dependent and neglected children;

(3) accept and disburse as provided in Subdivision (1) of this subsection fees and contributions from parents, guardians, and relatives of children who are in county-supported substitute care or custody or who are being assisted by casework, day care, or homemaker service, by medical, psychological, psychiatric, dental, or other remedial help or by teaching, training, or other services;

(4) receive funds available for the support or benefit of dependent and neglected children in the board's legal custody, which funds may include social security benefits, life insurance proceeds, survivors' pension or annuity benefits, and other property or beneficial interests in property which may belong to or pass to the children;

(5) account for and expend properly funds received as fees and contributions, payments by guardians, or payments for the benefit of any child in the board's legal custody; and

(6) receive and utilize funds, grants, and assistance available to the board from any federal or state department or agency to carry out the functions and programs of the federal or state department or agency designed to aid or extend programs and operations approved by the board.

(b) The board shall designate the Director of the Harris County Child Welfare Unit or one of his assistants to apply for letters of guardianship when necessary to carry out the purpose stated in Subdivision (4) of Subsection (a) of this section and to apply or disburse the funds collected under the subdivision for special items of support for dependent and neglected children and for general administrative expenses related to the care of dependent and neglected children or to hold the funds in trust or apply the funds for a particular or more restricted purpose required by law or the source of the funds.

**Delegation of Authority**

Sec. 24. The board may delegate to the Director of the Harris County Child Welfare Unit or an assistant director the performance of any function and the discharge of any duty authorized or required by this Act, provided that before the annual report and annual budget are submitted to the commissioners court, the board must approve them. Any delegation made under this section is subject to periodic review by the board.

[Acts 1965, 59th Leg., p. 565, ch. 288; Acts 1971, 62nd Leg., p. 2635, ch. 866, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 400, ch. 178, § 1, eff. May 25, 1973.]

Sections 2 and 3 of the 1973 Act provided:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed to the extent of the conflict.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

**Art. 5139WW. Van Zandt County Juvenile Board**

**Board Established**

Sec. 1. There is established the Van Zandt County Juvenile Board.

**Composition of Board**

Sec. 2. The board is composed of the county judge and county attorney of Van Zandt County, and the district judge of each judicial district which includes Van Zandt County.

**Chairman**

Sec. 3. The judge of the juvenile court for Van Zandt County is the chairman of the board and its chief administrative officer.

**Juvenile Officer**

Sec. 4. The board may appoint a juvenile officer.

**Compensation**

Sec. 5. (a) As compensation for the duties added by this Act, the commissioners court for Van Zandt County may pay each member of the board an amount not to exceed \$600 a year. If the commissioners court allows compensation under this Section, the compensation is paid in 12 equal monthly installments, and is paid out of money in the general fund of the County. Compensation allowed under this Section is in

addition to any other compensation provided or allowed by law for the district judges, the county judge, and the county attorney.

(b) If the board appoints a juvenile officer, the commissioners court shall pay the juvenile officer a salary in the amount the commissioners court shall determine reasonable and shall allow him an amount for expenses that does not exceed \$1,800 a year. The commissioners court shall provide money for paying the salary and certified expenses of the juvenile officer. The chairman of the board shall certify to the commissioners court the expenses of the juvenile officer which are necessary for the juvenile officer to properly perform his duties.

#### Powers and Duties of the Board

Sec. 6. The board has the powers, duties, and functions prescribed for juvenile boards created under the provisions of Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

#### Powers and Duties of Juvenile Officer

Sec. 7. The juvenile officer, if one is appointed, has the powers, duties, and functions prescribed for juvenile officers in Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any other duty or function prescribed for him by the board.

[Acts 1965, 59th Leg., p. 792, ch. 379, eff. June 9, 1965; Acts 1971, 62nd Leg., p. 2416, ch. 765, § 1, eff. Aug. 30, 1971.]

### Art. 5139XX. Kaufman County Juvenile Board

#### Board Established

Sec. 1. The Kaufman County Juvenile Board is established.

#### Composition of Board

Sec. 2. The board is composed of the county judge and county attorney of Kaufman County, and the district judge of each judicial district which now or in the future includes Kaufman County.

#### Chairman and Juvenile Officer

Sec. 3. (a) The judge of the juvenile court for Kaufman County is chairman of the board and its chief administrative officer.

(b) The board may appoint a juvenile officer, who serves at the pleasure of the board.

#### Compensation

Sec. 4. (a) As compensation for the extra duties imposed by this Act, the Commissioners Court of Kaufman County may pay each member of the board an amount not to exceed \$600 a year. This compensation is in addition to all other compensation paid a board member by the state or county and is payable in equal monthly installments from the general fund of the county.

(b) The juvenile officer is entitled to an annual salary in an amount fixed by the board not to exceed \$6,500 a year; he is also entitled to reimbursement for his reasonable and necessary expenses, in an amount not to exceed \$1,-

800 a year, incurred while performing his duties as juvenile officer. The juvenile officer's expenses are payable on voucher signed by the chairman of the board. The Commissioners Court of Kaufman County shall pay the juvenile officer's salary and expenses from the general fund.

Sec. 5. [Blank].

#### Powers and Duties of Board

Sec. 6. The board has the powers and duties prescribed for juvenile boards in Articles 5140 and 5141, Revised Civil Statutes of Texas, 1925, as amended.

#### Powers and Duties of Juvenile Officer

Sec. 7. The juvenile officer has the powers and duties prescribed for juvenile officers in Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any other duties prescribed for him by the board.

[Acts 1967, 60th Leg., p. 374, ch. 181, eff. May 12, 1967; Acts 1969, 61st Leg., p. 1672, ch. 535, § 1, eff. Sept. 1, 1969.]

### Art. 5139YY. Moore County Juvenile Board

Sec. 1. There is hereby established a juvenile board for Moore County to be called the Moore County Juvenile Board, which shall be composed of seven non-salaried members: The county judge of Moore County being one member; two members appointed by the Moore County Commissioners Court; two members appointed by the Dumas City Commission; and two members appointed by the board of trustees of the Dumas Independent School District. The terms of office of the appointive members of this board shall be for alternating terms of two years each. The terms of three of the appointed members, one each from the city, county, and school district, will expire on December 31st of each odd-numbered year, and the terms of the remaining three appointed members, one each from the city, county, and school district, will expire on December 31st of each even-numbered year. It is understood that the terms of three members originally appointed will expire on December 31, 1969, and that the terms of the remaining three members originally appointed will expire on December 31, 1970. The members of the board shall select a chairman from among their number.

Sec. 2. The Moore County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5140, Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer and/or officers for Moore County, it may appoint a juvenile officer and/or officers for a term not to exceed two years, at the end of which term, the board may appoint another juvenile officer or officers for succeeding terms not exceeding two years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling, and/or having such other qualifications as may be specified by the Moore County Juvenile Board. The board shall be the final judge of the qualifications for such juvenile officer or officers. The juvenile officer shall have all the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the board, and shall receive an annual allowance for expenses in an amount to be determined by the board.

Sec. 4. The Commissioners Court of Moore County may enter into an agreement with the city commission of Dumas and the board of trustees of the Dumas Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department. The agreement shall provide that the commissioners court pay 33- $\frac{1}{3}$  percent, the city commission of Dumas pay 33- $\frac{1}{3}$  percent, and the board of trustees of the Dumas Independent School District pay 33- $\frac{1}{3}$  percent of the funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

[Acts 1969, 61st Leg., p. 869, ch. 288, §§ 1 to 4, eff. May 22, 1969.]

#### Art. 5139ZZ. Orange County Juvenile Board

Sec. 1. The Orange County Juvenile Board is composed of the County Judge of Orange County, and the District Judges of Orange County.

Sec. 2. (a) The commissioners court may pay each member of the juvenile board an amount not to exceed \$3,000 per year as compensation for serving as a member of the juvenile board.

(b) The commissioners court may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

Sec. 3. The juvenile board may

(1) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(2) suspend or remove any employee at any time for good cause;

(3) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(4) authorize the use of foster homes for the temporary care of delinquent, dependent, or neglected children; and

(5) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made.

Sec. 4. The juvenile board shall

(1) prescribe the duties and conditions of employment of its employees;

(2) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(3) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(4) designate the juvenile court in accordance with Chapter 204, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 2338-1, Vernon's Texas Civil Statutes); and

(5) submit an annual proposed budget to the Orange County Commissioners Court.

Sec. 5. The juvenile probation officer has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer shall

(1) appoint assistant juvenile probation officers with the approval of the juvenile board;

(2) appoint, with the approval of the juvenile board, a minimum of one field worker for each 50,000 inhabitants of Orange County according to the last preceding federal census;

(3) investigate all cases referred to him by the board;

(4) investigate all cases brought before the juvenile court;

(5) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(6) represent the interest of the juvenile before the juvenile court;

(7) furnish the board and the juvenile court any information and assistance required by them;

(8) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information which may assist the court in determining the proper disposition to be made of any juvenile; and

(9) keep a record which will at all times show the names of all referrals and delinquent juveniles within Orange County and the names and addresses of the persons having custody of them.

Sec. 7. The commissioners court shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juve-

nile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

Sec. 8. (a) For the purpose of maintaining the child support office, there shall be taxed, collected, and paid as other costs the sum of \$5 in each divorce case hereafter filed in any district court of Orange County. Such costs shall be collected by the district clerk and taxed as other costs, and when collected shall be paid by said district clerk to the county probation department to be kept in a separate fund known as the "Child Support Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of assisting in paying the costs of maintaining the child support office in the Probation Department of Orange County, including payment of salaries and other expenses of the collector of child support and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the office. This fund shall be supplemented out of the general fund, or other available funds of the county where necessary.

(b) Each month for which a person has been ordered by a District Court of Orange County to pay child support, alimony, or separate maintenance into the Orange County Probation Department, the payor of such child support, alimony, or separate maintenance shall pay into the Orange County Probation Department a child support service fee in the sum of \$1 per month payable annually in advance; provided, however, that in those instances where the payor of child support, alimony, or separate maintenance is a member of the armed services and where such child support, alimony, or separate maintenance is paid into the Orange County Probation Department by government check in behalf of such military personnel, and wherein the monthly payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Orange County Probation Department.

(c) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by a District Court of Orange County to commence payments of child support, alimony, or separate maintenance following passage of this Act and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the armed services and so long as

child support allotment payments exceed the amount of child support ordered by the court.

(d) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the probation department authorized by the Orange County Juvenile Board.

(e) A record shall be kept of all child support service fees collected and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Orange County.

(f) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(g) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

Sec. 8a. (a) For purposes of providing legal services, court costs, and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed the sum of \$10 in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Orange County Probation Department.

(b) Such fee of \$10 shall be paid into the Orange County Probation Department by the person initiating such contempt proceedings, but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Orange County Probation Department for alleged contempt of court, the \$10 assessment shall be used, as needed, for the payment of services rendered by the office of the district clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the \$10 assessment. In such instance, however, any unused funds over and above the \$10 assessment shall be refunded to the depositor by the probation department.

(d) Receipts of all disbursements of moneys paid into the probation department for matters involving actions of contempt shall be kept on file and all such funds received by the probation department shall be deposited to the child support account. This fund shall be administered by the Orange County Juvenile Board and shall be subject to regular audit by the



county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

(e) The fee prescribed by this section shall not be collected from any person who has applied for or receives public assistance under the law of this state.

Sec. 9. For the purpose of maintaining adoption investigation services, there shall be taxed, collected, and paid as other costs the sum of \$10 in each adoption case hereafter filed in any district court of Orange County. Such cost shall be collected by the district clerk, and when collected, shall be paid by said district clerk to the county probation department to be kept by that department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of assisting in paying the cost of maintaining adoption investigation services in the Probation Department of Orange County, including salaries and other expenses of the adoption investigator and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the investigator. This fund shall be supplemented out of the general fund or other available funds of the county where necessary.

Sec. 10. In all suits for divorce filed in any district court of Orange County, where it appears from the petition or otherwise that the parties to such suit have a child or children under 18 years of age, it shall be the duty of the chief probation officer, upon order of the court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the court prior to the trial of said case, and if desired by the court, to produce such evidence as may have been developed in connection with such matters.

Sec. 11. It shall be the duty of the chief probation officer to keep a record which will at all times show the names of all dependent, neglected, or delinquent juveniles within Orange County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the juvenile board, and a written report shall be made to the judge of the juvenile court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the court in determining the proper disposition to be made of any juvenile.

[Acts 1969, 61st Leg., p. 1010, ch. 325, §§ 1 to 11, eff. May 27, 1969.]

#### Art. 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards

Sec. 1. (a) The Juvenile Board of Anderson County is created. The board consists of the County Judge of Anderson County, the judges of the district courts in Anderson County, and the District Attorney for the 3rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed by service on the juvenile board, each member shall be paid by the county an amount not less than \$50 per month nor more than \$250 per month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for county and district judges and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

Sec. 2. (a) The Juvenile Board of Henderson County is created. The board consists of the County Judge of Henderson County, the judges of the district courts in Henderson County, and the District Attorney for the 3rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed by service on the juvenile board, each member shall be paid by the county an amount not less than \$50 per month nor more than \$250 per month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for county and district judges and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

(d) The Juvenile Board of Anderson County shall appoint a juvenile officer for Anderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Anderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

Sec. 3. (a) The Juvenile Board of Houston County is created. The board consists of the County Judge of Houston County, the judges of the district courts in Houston County, and the District Attorney for the 3rd Judicial District.

The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed by service on the juvenile board, each member shall be paid by the county an amount not less than \$50 per month nor more than \$250 per month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for county and district judges and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

(d) This section takes effect January 1, 1971.

[Acts 1969, 61st Leg., p. 1636, ch. 508, § 1, eff. Sept. 1, 1969, §§ 2, 3, eff. Jan. 1, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 27, ch. 10, § 1, eff. Oct. 24, 1972.]

### Art. 5139BBB. Nueces County Juvenile Board Creation

Sec. 1. The Juvenile Board of Nueces County is created.

#### Composition of Board

Sec. 2. The juvenile board is composed of the judges of the district courts having jurisdiction in Nueces County, the county judge, and the judges of any courts of domestic relations having jurisdiction in Nueces County.

#### Chief Probation Officer and Assistants; Appointment

Sec. 3. There shall be one chief probation officer who shall be appointed by the juvenile board. The chief probation officer shall appoint assistant probation officers, subject to confirmation by the juvenile board. The number of assistant probation officers shall be determined by the juvenile board, subject to the approval of the commissioners court.

#### Term of Office; Suspension or Removal

Sec. 4. The term of office of the chief probation officer and assistant probation officers shall be for a period of two years. The juvenile board may at any time, for good cause, suspend or remove any juvenile officer, whether chief or assistant.

#### Compensation of Probation Officers

Sec. 5. The compensation of all probation officers shall be fixed by the juvenile board, subject to the approval of the commissioners court.

#### Control over Juvenile Officers by Board; Rules and Regulations

Sec. 6. The juvenile board shall have direction and control over all juvenile officers and may make rules and regulations to implement that direction and control.

#### Supervision of Institutions; Appointment of Superintendents, Confirmation by Board, Term, Salary and Suspension or Removal

Sec. 7. All homes, schools, farms, and any other institutions or places of housing main-

tained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of the juvenile board. The superintendent of each institution shall be appointed by the chief probation officer for a term of two years, and each appointment shall be confirmed by the juvenile board. The salary of each superintendent shall be fixed by the commissioners court. Each superintendent may at any time, for good cause, be suspended or removed by the appointing authority.

#### Records, Visitations and Reports of Probation Officers

Sec. 8. A probation officer shall keep a record which will, at all times, show the names of all dependent or delinquent juveniles within the county and the names and addresses of the persons having custody of the juveniles. Visitations by the officers shall be made at such reasonable times as may be directed by the juvenile board, and written reports shall be made to the juvenile board showing such facts relating to the environment, treatment, education, and welfare of the minors as directed by the juvenile board.

#### Change in Custody of Juveniles; Court Order

Sec. 9. No person or institution, having legal custody of a dependent or delinquent juvenile, may deliver the juvenile to the custody of another person without an order of a court of competent jurisdiction within the county, sitting as a juvenile court, authorizing the change in custody. A copy of an order effecting change in custody shall be transmitted to the juvenile officers of the county.

#### Visitation of Institutions; Orders or Regulations, Compliance, Entry in Book, Delivery of Copy to Superintendent; Reports

Sec. 10. The members of the juvenile board shall make visitations, at reasonable intervals, to the institutions in the county in which dependent or delinquent juveniles are kept, maintained, or educated. The juvenile board may adopt any order or regulation, pertaining to the welfare of the juveniles, found necessary or for the welfare of the juveniles. Any person having in legal custody a dependent or delinquent juvenile shall comply with the orders and regulations of the juvenile board. Any order or regulation shall be entered of record by the chief probation officer in a book kept for the purpose and shall be open for public inspection. A copy of any order or regulation certified by the probation officer shall be delivered to the superintendent, or person in charge or control, of any institution in which dependent or delinquent juveniles are kept, maintained, or educated. The juvenile board may, by order or regulation, require of the superintendent or person in charge reports giving the board such information relating to the juveniles or institutions as may be required by the juvenile board.

**Suspension or Termination of Assistants;  
Notice and Hearing**

Sec. 11. The chief probation officer may at any time, with the approval of the juvenile board, for good cause shown, suspend or terminate the employment and service of any assistant after the assistant has been duly notified and afforded an opportunity to be heard by the board.

**Surety Bonds; Juvenile Officers and Superintendents**

Sec. 12. The juvenile board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any juvenile officer or superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by the board.

**Investigation and Report to Board on Welfare  
of Minor; Receipts and Disbursements,  
Entry in Book and Audit**

Sec. 13. The juvenile board, or any member, may at any time require any probation officer to make an investigation and report the facts relating to the welfare of any minor or any child abandonment or desertion cases or proceedings. The board may require the officer to receive and disburse, under orders of the board, for the benefit of any such minor, any sums of money required to be paid into court for the maintenance of the minor. The officer shall enter all such receipts and disbursements in a well-bound book kept for the purpose in the probation office subject to public inspection, showing all such receipts and disbursements. The book shall be audited by the county auditor.

**Child Abandonment and Desertion Cases; Assignment  
of Assistant District Attorney to Represent  
Board and Probation Officers**

Sec. 14. The district attorney shall assign an assistant district attorney in his office for the special duty of representing the juvenile board and the probation officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

**Compensation of Board Members; Payment**

Sec. 15. The members of the Nueces County Juvenile Board, in consideration of the additional duties imposed upon them, shall receive additional annual compensation of not less than \$4,200 nor more than \$6,000, as determined by the commissioners court. The compensation provided for in this section shall be paid by the commissioners court and is in addition to all other compensation allowed by law to such officers; provided that the compensation herein provided shall be the sole and only compensation which may be paid to members of the juvenile board in consideration of their services on such Board, such compensation to be in lieu of any compensation for such services which may be provided by other statutory provisions concerning juvenile boards.

**Probation Officers; Automobiles; Expenses; Office**

Sec. 16. The commissioners court may furnish automobiles to the probation officers to be used in the official work of the probation department and may provide for the maintenance and operation of the automobiles. If the commissioners court does not furnish automobiles to the probation officers in the discharging of their duties, it shall allow them such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles. The commissioners court shall allow the probation officers such other expenses incurred in the discharge of their duties as it deems reasonable and proper, subject to the approval of the county auditor; it shall allow necessary funds to maintain and operate the office of the probation department.

**Effect of Act on Current Juvenile Officers**

Sec. 17. Nothing in this Act shall be construed to affect the status of a person serving as juvenile officer or assistant juvenile officer on the effective date of this Act or to require a new appointment of the officers during their current terms of office.

[Acts 1971, 62nd Leg., p. 679, ch. 64, eff. April 20, 1971.]

**Art. 5139CCC. Johnson County Juvenile Board**

Sec. 1. The county judge of Johnson County and the judge of the judicial district which includes Johnson County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Johnson County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board shall each be allowed additional compensation of not more than \$3,600.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Johnson County. The compensation shall be set by the Commissioners Court of Johnson County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Johnson County shall appoint a juvenile officer for Johnson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State. The juvenile officer shall be paid a salary as fixed by the Commissioners Court, to be paid out of the general fund or any other available fund of Johnson County. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court.

[Acts 1971, 62nd Leg., p. 885, ch. 116, eff. May 10, 1971.]

**Art. 5139DDD. Deaf Smith County Juvenile Board**

Sec. 1. The Commissioners Court of Deaf Smith County is hereby authorized to establish

a Juvenile Board for Deaf Smith County to be called the Deaf Smith County Juvenile Board, which shall be composed of seven nonsalaried members; the county judge of Deaf Smith County being one member, two members appointed by the Hereford City Commission; two members appointed by the Deaf Smith County Commissioners Court; and two members appointed by the Board of Trustees of the Hereford Independent School District. The terms of office of the appointive members of this board shall be for alternating terms of two years each. The terms of three of the appointed members, one each from the city, county, and school district, will expire on December 31 of each odd-numbered year, and the terms of the remaining three appointed members, one each from the city, county, and school district, will expire on December 31 of each even-numbered year. It is understood that the terms of three members originally appointed will expire on December 31, 1971, and that the terms of the remaining three members originally appointed will expire on December 31, 1972. The members of the board shall select a chairman from among their number.

Sec. 2. The Deaf Smith County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5140, Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer and/or officers for Deaf Smith County, it may appoint a juvenile officer and/or officers for a term not to exceed two years, at the end of which term, the board may appoint another juvenile officer or officers for succeeding terms not exceeding two years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling, and/or having such other qualifications as may be specified by the Deaf Smith County Board. The board shall be the final judge of the qualifications for such juvenile officer or officers. The juvenile officer shall have all the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the Juvenile Board. The juvenile officer or officers shall receive an annual salary and shall receive an annual allowance for expenses in amounts to be fixed by the Commissioners Court of Deaf Smith County.

Sec. 4. The Commissioners Court of Deaf Smith County may enter into an agreement with the city commission of Hereford and the board of trustees of the Hereford Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department, such agreement to extend for such period of time as the three governing bodies may determine from time to time. The

agreement shall provide that Deaf Smith County pay 33 $\frac{1}{3}$  percent, the City of Hereford pay 33 $\frac{1}{3}$  percent, and the Hereford Independent School District pay 33 $\frac{1}{3}$  percent of funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

Sec. 5. The City of Hereford and the Hereford Independent School District are hereby authorized to appropriate and expend the necessary funds for implementation of this statute.

[Acts 1971, 62nd Leg., p. 891, ch. 120, eff. May 10, 1971.]

#### Art. 5139EEE. Northeast Texas Juvenile Board

Sec. 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created.

(b) The board is composed of the county judges of Bowie, Cass, Red River, Morris, and Titus Counties and the judges of each district court having jurisdiction in any of those counties.

Sec. 2. (a) As compensation for the added duties imposed upon members of the Northeast Texas Juvenile Board, each member may be allowed additional annual compensation of not less than \$1,200, to be fixed by the commissioners courts of the participating counties and paid monthly in 12 equal installments out of the general funds of the counties on a pro rata basis according to the population of each county in the last preceding federal census.

(b) The commissioners court of each county may reimburse any judge of a juvenile court in that county for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable to any juvenile judge under this subsection is limited to a maximum of \$600 per year.

Sec. 3. The board has all the powers and duties prescribed for juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. (a) The judges of the juvenile courts within the area of jurisdiction of the board shall appoint, by a decision of a majority of the judges, a chief juvenile probation officer. The appointment is subject to the approval of the juvenile board. The judges may remove the chief juvenile probation officer at any time, subject to the approval of the board. The commissioners courts shall pay the chief juvenile probation officer an annual salary of not less than \$8,400. The salary shall be paid on a pro rata basis according to the population of each county in the last preceding federal census. Subject to the approval of the judges of the juvenile courts and the Northeast Texas Juvenile Board, the chief juvenile probation officer may appoint one juvenile probation officer for each 30,000 population in each county, according to the last preceding federal census

and additional juvenile probation officers as the board determines to be necessary. The board shall fix the salaries of the juvenile probation officers, subject to the approval of the commissioners courts. The commissioners court of each county shall provide the fund for the salaries and reasonable expenses of the officers.

(b) Subject to the approval of the judges of the juvenile courts, the chief juvenile probation officer may employ one secretary and may employ as many additional secretaries as the board determines to be necessary, at a salary not to exceed \$6,000 for each secretary, which salary shall be recommended by the chief juvenile probation officer.

(c) A person appointed or employed under the provisions of this Act may be removed from office at any time by the power appointing him.

Sec. 5. (a) The juvenile probation officers of Bowie, Cass, Red River, Morris, and Titus Counties shall:

(1) investigate all cases referred to them by the juvenile courts or the juvenile board;

(2) be present in the juvenile court and represent the interests of the juvenile when the case is heard;

(3) furnish to the court and juvenile board any information or assistance required;

(4) take charge of any child before and after the trial; and

(5) perform other services for the child as may be required by the court.

(b) The juvenile probation officers of Bowie, Cass, Red River, Morris, and Titus Counties have the powers granted to juvenile probation officers by general law.

Sec. 6. (a) Nothing in this Act may be construed to affect the status of a person serving as a juvenile officer on the effective date of this Act or to require a new appointment of the officers.

(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board.

[Acts 1971, 62nd Leg., p. 1302, ch. 342, eff. May 24, 1971.]

#### Art. 5139FFF. Eastland County Juvenile Board

Sec. 1. There is established a county juvenile board in Eastland County. The board is composed of the county judge, the judge of the 91st district court, the county attorney, and the sheriff. The official title of the board shall be the Eastland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chair-

man of the board and its chief administrative officer.

Sec. 2. For the added duties hereby imposed on the members of the board, the commissioners court of the county may allow the members of the board compensation from the county general fund. This compensation shall be in addition to any other salary received by the members of the board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. The juvenile board of Eastland County, with the consent of the commissioners court, may appoint a juvenile officer for Eastland County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary as fixed by the juvenile board and approved by the commissioners court.

[Acts 1971, 62nd Leg., p. 1576, ch. 426, eff. Aug. 30, 1971.]

#### Art. 5139GGG. Gregg County Juvenile Board

Sec. 1. There is hereby established a juvenile board for Gregg County, which shall be known as the Gregg County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county and the county judge of Gregg County. The county judge of Gregg County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed on members of such board, each member thereon may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court of the county, payable in 12 equal monthly installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

[Acts 1973, 63rd Leg., p. 231, ch. 107, §§ 1, 2, eff. May 18, 1973.]

#### Art. 5139HHH. Collin County Juvenile Board

Sec. 1. The county judge of Collin County and the judges of the 199th Judicial District Court and the 59th Judicial District Court, which districts include Collin County, shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board may each receive additional compensation of not

more than \$6,000.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Collin County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Collin County shall appoint a juvenile officer for Collin County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State. The juvenile officer shall be paid a salary as fixed by the Commissioners Court, to be paid out of the general fund or any other available fund of Collin County. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court.

[Acts 1973, 63rd Leg., p. 819, ch. 370, eff. June 12, 1973.]

#### Art. 5139/III. Hill County Juvenile Board

Sec. 1. The County Judge of Hill County and the judge of any judicial district which includes Hill County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Hill County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the county and district judges who are members of the board shall each be allowed additional compensation of not more than \$2,400 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Hill County. The compensation shall be set by the Commissioners Court of Hill County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Hill County shall appoint a juvenile officer for Hill County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court, to be paid out of the general fund or any other available fund of Hill County. The juvenile board by majority vote may discharge any appointee and such discharge need not be approved by the commissioners court.

[Acts 1973, 63rd Leg., p. 1720, ch. 624, eff. June 15, 1973.]

#### Art. 5140. Powers of Board

Such Board shall neither have nor exercise judicial power or function. In the event such Board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said Board to file complaint against such child in some court of such county having jurisdiction

to hear and determine such complaint. Such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court.

[Acts 1925, S.B. 84.]

#### Art. 5141. Sessions of Board

Such Board shall hold meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under the jurisdiction of any of its courts. If such child has been adjudged to be dependent, neglected or delinquent by any court of such county, it may make to the court or person having custody of such child, such recommendation in writing as it may think proper as to the care and custody of such child.

[Acts 1925, S.B. 84.]

#### Art. 5142. Qualifications, Duties, Appointment, Salaries and Removal

There may be appointed, in the manner hereinafter provided, discreet persons of good moral character to serve as juvenile officers, for periods not to exceed two (2) years from date of appointment.

Such officers shall have authority and it shall be their duty to make investigations of all cases referred to them as such by such Board; to be present in court and to represent the interest of the juvenile when the case is heard, and to furnish to the court and such Board any information and assistance as such Board may require, and to take charge of any child before and after the trial and to perform such other services for the child as may be required by the court or said Board, and such juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices.

The clerk of the court shall when practicable, notify such juvenile officer when any juvenile is to be brought before the court. It shall be the duty of such juvenile officer to make investigation of any such case, to be present in court to represent the interest of the juvenile when the case is tried, to furnish to such court such information and assistance as the court may require and to take charge of any juvenile before and after the trial as the court may direct. In counties having a population of less than eighty thousand (80,000) one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion, such officer is needed who shall receive a compensation not to exceed Two Hundred Dollars (\$200) per month, and expenses not to exceed Two Hundred and Fifty Dollars (\$250) per year, provided that in counties having a population of not less than

thirty-five thousand (35,000) and not more than eighty thousand (80,000) and containing a city of more than twenty-nine thousand (29,000) population, one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion the services of such officer are needed whose salary shall not exceed Two Hundred Dollars (\$200) per month and expenses not to exceed Two Hundred and Fifty Dollars (\$250) per year, and in such counties the Commissioners Court may appoint an assistant to the said juvenile officer, when in its opinion such assistant is necessary, whose salary shall not exceed One Hundred and Fifty Dollars (\$150) per month. Provided further that, in counties having a population of not less than twenty thousand (20,000) and not more than eighty thousand (80,000) as shown by the 1940 Federal Census or any future Federal Census, and which have an assessed valuation of taxable property of not less than Fourteen Million, Five Hundred Thousand Dollars (\$14,500,000) and not more than Twenty-five Million Dollars (\$25,000,000), one (1) juvenile officer may be appointed by the Commissioners Court, when in its judgment such officer is needed, who shall receive a salary not to exceed Two Hundred Dollars (\$200) per month. Provided further, that in counties having a population of not less than nineteen thousand (19,000) and not more than fifty thousand (50,000) as shown by the 1940 Federal Census and which have an assessed valuation of taxable property of not less than Twenty-five Million Dollars (\$25,000,000) one (1) juvenile officer may be appointed by the Commissioners Court, whose salary may not exceed Three Hundred Dollars (\$300) per month and expenses not to exceed Six Hundred Dollars (\$600) per year.

Provided that in counties having a population of eighty thousand (80,000) and less than one hundred and fifty thousand (150,000), the county judge may appoint a juvenile officer subject to the approval of the County Juvenile Board, for a period not to exceed two (2) years from date of appointment at a salary not to exceed Two Hundred and Fifty Dollars (\$250) per month, and expenses not to exceed Four Hundred and Twenty Dollars (\$420) per year. Such juvenile officer may select assistant juvenile officers subject to the approval of the county judge and the County Juvenile Board, the number not to exceed one (1) assistant juvenile officer to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law, in Article 3902, Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses, each not to exceed Four Hundred and Twenty Dollars (\$420) per year.

Provided that in counties having a population of one hundred and fifty thousand (150,000) or more, and containing a city of one hundred thousand (100,000) or more, the county judge may appoint a juvenile officer, subject to

the approval of the County Juvenile Board to serve for a period not to exceed two (2) years from the date of appointment, and whose extra duties shall be to make investigations for the Commissioners Court on applications for charity, or admittance into detention homes or orphan homes created by such counties. The salary of such juvenile officer shall not exceed Three Hundred Dollars (\$300) per month, his allowance for expenses not to exceed Two Hundred Dollars (\$200) a year. Such juvenile officer may select assistant juvenile officers, subject to the approval of the county judge and the County Juvenile Board, the number of such assistant juvenile officers not to exceed one (1) assistant to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law in Article 3902 of the Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses not to exceed Two Hundred Dollars (\$200) per year each.

In the appointment of all juvenile officers, the county judge and the County Juvenile Board may select for such office any school attendance officer or officers of the county, or of school districts in the county, that may be authorized by law, and the salary and expense of such joint juvenile officer or officers and attendance officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Salaries of paid juvenile officers and their assistants shall be fixed by the Commissioners Court, not to exceed the sums herein mentioned, and any bill for the expenses not exceeding the sums herein provided for shall be certified by the county judge as being necessary in the performance of the duties of a juvenile officer. The Commissioners Court of the county shall provide the necessary funds for the payment of salaries and expenses of the juvenile officers provided for in this Act. The appointment of said juvenile officers shall be filed in the office of the clerk of the county court. Juvenile officers shall take the oath to perform their duties and file such oath in the office of the county clerk. As a basis for reckoning the population of any county the preceding Federal Census shall be used.

Provided that any juvenile officer appointed under the provisions of this Act may be removed from office by the power appointing him at any time.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 335, ch. 228; Acts 1937, 45th Leg., p. 545, ch. 269, § 1; Acts 1945, 49th Leg., p. 282, ch. 205, § 1; Acts 1947, 50th Leg., p. 65, ch. 50, § 1; Acts 1947, 50th Leg., p. 1026, ch. 440, § 1; Acts 1949, 51st Leg., p. 447, ch. 241, § 1.]

#### **Art. 5142a. Probation Officers; Counties of 350,000 Population**

Appointment and Salary of Chief Probation Officer;  
Automobile; Expenses; Assistants

Sec. 1. Provided that in counties having a population of more than three hundred and fif-

ty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, regular or special, the County Juvenile Board shall appoint a Chief Probation Officer for a term of two (2) years at a salary fixed by the said Juvenile Board and approved by the Commissioners Court, to be paid monthly by the county. The Commissioners Court is authorized to furnish such Chief Probation Officer and Assistant Probation Officers automobiles to be used in the official work of the Probation Department, and provide for the maintenance and operation of same; or if the Commissioners Court does not furnish automobiles to the Chief Probation Officer and his assistants in the discharge of their duties, it shall allow such Chief Probation Officer and Assistant Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles. The Commissioners Court shall allow such Probation Officers such other expenses as it may think reasonable and proper which are incurred in the discharge of their duties, subject to the approval of the County Auditor, and such funds as are necessary to maintain and operate the office of the Probation Department. Such Chief Probation Officer shall select Assistant Probation Officers subject to approval of such Board; the number of such assistants to be determined by the Juvenile Board, subject to the approval of the Commissioners Court. The salaries of such assistants shall be set by the Juvenile Board, subject to the approval of the Commissioners Court. The head of a Department need not before have served for any prescribed period of time.

#### Compensation for Additional Services

Sec. 1-a. For the additional services and duties required by this Act each District Judge in any county coming under the terms of this Act shall receive in addition to all other compensation now provided by law, the sum of Seventy-five Dollars (\$75) per month out of the General Fund of such county.

#### Record of Desertion Cases; Investigation as to Support Payments

Sec. 2. One or more probation officers out of the probation department in counties with a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, having a County Juvenile Board as may be determined necessary by the County Juvenile Board shall keep a record of all wife and child desertion cases wherein criminal charges are pending in said county and shall immediately investigate the facts in each case and the defendant's ability to support his wife and/or children, and shall upon complaint that any payment under the order of the Court for the support of the defendant's wife and/or children make investigations into the reasons why such payments are not being made and shall make reports of all such matters immediately upon the making of such investigation to the

District Attorney and/or the Court in which such case is pending.

#### Disbursement of Payments in Desertion Cases

Sec. 3. All payments made under the order of the Court in such county in wife and child desertion cases for the support of wives and children shall be paid in to either the probation officer working in said court as an officer of the court, or the district clerk, as the Juvenile Board may direct, and said probation officer or district clerk, as the case may be, shall disburse said funds for the benefit of the wife and/or children of the defendant making such payment in such manner as shall appear to the Court to be for the best interest of said wife and/or children.

#### Bond of Probation Officer

Sec. 4. In all cases where the Juvenile Board designates the probation officer to receive said payments in wife and child desertion cases for the support of wives and children, said probation officer shall make a surety bond in some solvent surety company authorized to make such bonds in Texas conditioned upon the faithful performance of the duties of his position and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the county auditor and subject to the approval of the county auditor.

#### Records of Receipts and Disbursements

Sec. 5. In all cases where the probation officer has been designated by the Juvenile Board to receive payments in wife and child desertion cases for the support of wives and children, said probation officer in such counties having at least eight (8) Districts Courts, at least two (2) of which are Criminal District Courts, and at least four (4) County Courts, at least two (2) of which are County Courts at Law and at least one (1) is a County Criminal Court, shall keep a complete record of all his investigations and of his receipts and disbursements of all moneys which shall be a public record open to the inspection of the public, and it shall be the duty of the county auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

#### Investigation and Report in Divorce Suits Between Parties Having Children Under 18; Supervising Head of County Institutions as Probation Officer

Sec. 6. In all suits for divorce in counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age it shall be the duty of the Probation Department subject to the direction of the Court to make a complete and thorough examination into the merits of the claim for divorce and to report its findings to the Court in con-



nection therewith and to make a thorough and complete investigation as to the necessities of the child or children and the disposition that should be made of such child or children and to make report thereof to the Court prior to the trial of said case, and if desired by the Court, produce such evidence as may have been developed in connection with such matters on the trial of such case. The County Juvenile Board in counties having a population of over three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census is hereby authorized to appoint a supervising head of county institutions having to do with juveniles, delinquents and dependents of such county which said supervising head of county institutions may be the county probation officer of said county who, if appointed, may receive a salary of not less than Twelve Hundred Dollars (\$1200) nor more than Twenty-four Hundred Dollars (\$2400) per annum, as such officer to be determined by the Juvenile Board, in addition to the salary paid him as county probation officer; or in the discretion of the County Juvenile Board, any person may be selected by such Board as the supervising head of county institutions, who shall be paid a salary not in excess of Five Thousand Dollars (\$5,000) a year to be agreed upon by said Juvenile Board and the County Commissioners Court, and said County Juvenile Board is hereby authorized and required to appoint the heads of all county institutions having to do with juveniles, juvenile delinquents and juvenile dependents. Said supervising head of the county institutions is hereby authorized and required to direct the policies and conduct of such institutions under the supervision and direction of the County Juvenile Board. The heads of various institutions shall be authorized to select such other employees for their institutions as may be determined or needed by the County Juvenile Board, at such salary as may be fixed by said County Juvenile Board, and such salaries are to be subject to the approval of the County Commissioners Court.

#### Reports by Supervising Head to Juvenile Board

Sec. 7. Said supervising head of the County Institutions in such counties or other county officers under his direction, is hereby required to follow up and supervise all cases committed to such institutions as are provided or may be provided for juveniles, delinquents and dependents until they become of age, reporting to the Juvenile Board from time to time as required by it for its approval and action. The Commissioners Court shall provide the necessary funds for the operation of all such institutions.

[Acts 1931, 42nd Leg., p. 759, ch. 302; Acts 1935, 44th Leg., p. 401, ch. 156, § 1; Acts 1949, 51st Leg., p. 47, ch. 27, § 1; Acts 1949, 51st Leg., p. 530, ch. 292, § 1; Acts 1957, 55th Leg., p. 1396, ch. 481, § 1.]

#### Savings Provisions

See articles 6819a-3, § 2; 6819a-5, § 2; 6819a-8, § 2.

#### Art. 5142a-1. Child Support Fund; Special Fee in Divorce Cases; Administration

For the purpose of maintaining the Child Support Office there shall be taxed, collected, and paid as other costs the sum of Three (\$3.00) Dollars in each divorce case hereafter filed in any District Court in each county having a population of more than 350,000 inhabitants according to the last preceding Federal Census. Such cost shall be collected by the clerk of the court and when collected shall be paid by him to the County Treasurer to be kept by him in a separate fund, such fund to be known as the "Child Support Fund". This fund shall be administered by the Juvenile Board of the county, subject to the approval of the Commissioners Court of the county, for the purpose of assisting in paying the cost of maintaining the Child Support Office in the Probation Department of the county, including the payment of salaries and other expenses of the Collector of Child Support and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the office. This fund shall be supplemented out of the General Fund, Officers Salary Fund, or other available funds of the county where necessary.

[Acts 1955, 54th Leg., p. 507, ch. 148, § 1.]

#### Art. 5142a-2. Probation Department of Wichita County

Sec. 1. There is hereby established the Wichita County Probation Department.

Sec. 2. The Wichita County Juvenile Board, as heretofore established and composed of the County Judge of Wichita County and the Judge of each Judicial District which includes Wichita County, shall have all powers conferred upon the Juvenile Board created under Article 5139 of Revised Civil Statutes of 1925 and any amendments thereto. The Wichita County Juvenile Board shall have authority to appoint a Chief Probation Officer and such assistants as may be necessary, and to determine the duties to be assigned such Chief Probation Officer and his assistants, and the rate of pay which shall be paid all the personnel comprising the Wichita County Probation Department.

Sec. 3. The Wichita County Chief Probation Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. Said Chief Probation Officer shall appoint assistant probation officers subject to confirmation by the Juvenile Board. The number of assistants shall be determined by the Juvenile Board. The term of office of the Chief Probation Officer and assistant probation officers shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any probation officer, whether chief or assistant.

Sec. 4. All claims for expenses of the Chief Probation Officer, the Assistant Probation Officers, and administrative expenses for operation of the Probation Department, including all

necessary equipment and supplies, shall, before payment thereof, be approved by the Juvenile Board.

Sec. 5. The Commissioners Court of Wichita County shall provide the funds declared necessary by the Juvenile Board for the operation of the Department, payment of salaries and expenses of the Probation Officer and Assistants, provided that such funds shall not exceed Twenty-three Thousand Dollars (\$23,000) per year, and further, that such funds shall be in addition to funds received by the said Wichita County Probation Department from any other source.

Sec. 6. The Wichita County Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any probation officer or employee of any institution, under the jurisdiction of the Juvenile Board, in such sum as may be determined by said Board, and paid as an expense of the Probation Department.

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, detention and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the superintendent of each such institution shall be appointed by the Wichita County Chief Probation Officer and each such appointment shall be confirmed by the Juvenile Board. The salaries of such superintendents and assistants shall be fixed by the Wichita County Juvenile Board and such superintendent or assistant may at any time, for good cause, be suspended or removed by the appointing authority.

Sec. 8. When, in the opinion of the Wichita County Juvenile Board, the best welfare of any child or children coming within the purview of Article 2330 or Article 2338 of the Revised Civil Statutes of 1925 and any amendments thereto will be served by placement of said child or children in a foster home, said Juvenile Board may authorize the use of such foster home or homes for the temporary care of said child or children. The rate of pay for such foster care shall be determined by said Juvenile Board and payment of the cost of such foster care shall, when authorized by said Juvenile Board, be considered to be a necessary operating expense of the Probation Department.

Sec. 9. The Wichita County Juvenile Board shall have power and authority to accept and hold in trust for the operation of the Wichita County Probation Department or any duties or functions of the Wichita County Probation Department, any grant or devise of land or any gift or bequest, or any donation to be applied for the benefit of the Probation Department and to apply same in accordance with the terms of such gift.

Sec. 10. (a) Each month for which a person has been ordered by a District Court of Wichita County to pay child support, alimony,

or separate maintenance into the Wichita County Probation Department, the payor of such child support, alimony, or separate maintenance shall pay into the Wichita County Probation Department a child support service fee in the sum of \$1.00 per month payable annually in advance, provided, however, that in those instances where the payor of child support, alimony, or separate maintenance is a member of the Armed Services and where such child support, alimony, or separate maintenance is paid into the Wichita County Probation Department by Government check in behalf of such military personnel, and wherein the monthly payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Wichita County Probation Department.

(b) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by the District Court to commence payments of child support, alimony, or separate maintenance following passage of this amendment and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the Armed Services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(c) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the Probation Department authorized by the Wichita County Juvenile Board.

(d) A record shall be kept of all child support service fees collected, and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Wichita County.

(e) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(f) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

Sec. 10a. (a) For purposes of providing legal services, court costs and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there

shall be assessed the sum of Ten Dollars (\$10) in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Wichita County Probation Department.

(b) Such fee of Ten Dollars (\$10) shall be paid into the Wichita County Probation Department by the person initiating such contempt proceedings but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Wichita County Probation Department for alleged contempt of court, the \$10 assessment shall be used, as needed, for the payment of services rendered by the office of the District Clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the \$10 assessment. In such instance, however, any unused funds over and above the \$10 assessment shall be refunded to the depositor by the Probation Department.

(d) Receipts of all disbursements of moneys paid into the Probation Department for matters involving actions of contempt shall be kept on file and all such funds received by the Probation Department shall be deposited to the Child Support Account. This fund shall be administered by the Wichita County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

(e) The fee prescribed by this Section shall not be collected from any person who has applied for or receives public assistance under the law of this State.

Sec. 11. For the purpose of maintaining adoption investigation services, there shall be taxed, collected and paid as other costs the sum of Ten Dollars (\$10) in each adoption case hereafter filed in any District Court in Wichita County. Such cost shall be collected by the District Clerk, and when collected, shall be paid by said District Clerk to the County Probation Department to be kept by that Department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This Fund shall be administered by the Juvenile Board of Wichita County for the purpose of assisting in paying the cost of maintaining adoption investigation services in the Probation Department of Wichita County, including salaries and other expenses of the Adoption Investigator and his assistants, the purchase of supplies and equipment, and all other neces-

sary expenses of the Investigator. This Fund shall be supplemented out of the General Fund or other available funds of the County where necessary.

Sec. 12. In all suits for divorce filed in any District Court in Wichita County, where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age, it shall be the duty of the Chief Probation Officer, upon order of the Court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the Court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the Court prior to the trial of said case, and if desired by the Court, to produce such evidence as may have been developed in connection with such matters.

Sec. 13. It shall be the duty of the Chief Probation Officer to keep a record which will at all times show the names of all dependent, neglected or delinquent juveniles within Wichita County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the Juvenile Board, and a written report shall be made to the Judge of the Juvenile Court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the Court in determining the proper disposition to be made of any juvenile.

[Acts 1957, 55th Leg., p. 1229, ch. 405; Acts 1965, 59th Leg., p. 1337, ch. 608, §§ 1, 2.]

#### Art. 5142b. Juvenile Officers in Counties of 225,000 to 390,000

##### Application of Law

Sec. 1. The provisions of this Act shall apply to all counties of the State of Texas having a population of not less than two hundred twenty-five thousand (225,000) inhabitants, nor more than three hundred ninety thousand (390,000) inhabitants, according to the last preceding or any future Federal Census, general or special.

##### Juvenile Board

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

##### Chief Probation Officer and Assistants; Appointment

Sec. 3. There shall be one Chief Probation Officer who shall be appointed by the Juvenile Board. Said Chief Probation Officer shall appoint Assistant Probation Officers, subject to confirmation by the Juvenile Board. The number of such Assistant Probation Officers shall be determined by the Juvenile Board subject to the approval of the Commissioners Court, pro-

vided such power of appointment and confirmation shall become effective immediately upon final passage of this Act, and the budget shall be amended, if necessary, to provide sufficient funds for the operation of this Act.

#### Terms of Office

Sec. 4. The term of office of Chief Probation Officer and Assistant Probation Officers shall be for a period of two years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

#### Compensation

Sec. 5. The compensation of all probation officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court, which shall be not less than Three Thousand, Six Hundred Dollars (\$3,600) per annum for the Chief Probation Officer, and not less than One Thousand, Eight Hundred Dollars (\$1,800) per annum for Assistants or Deputies.

#### Juvenile Board; Powers

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

#### Supervision of Institutions by Juvenile Board; Superintendents

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the Superintendent of each such institution shall be appointed by the Chief Probation Officer for a term of two (2) years, and each such appointment shall be confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners Court. Provided, however, that any such Superintendent may at any time, for good cause, be suspended or removed by the appointing authority.

#### Records and Visitation by Probation Officer

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education and welfare of such minors as shall be directed by the Juvenile Board.

#### Juvenile Court to Direct Change of Custody of Juveniles

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the custody of another person without an order of

court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

#### Visitations by Juvenile Board; Orders and Regulations

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge, of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

#### Suspension of Assistants by Chief Probation Officer

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

#### Bonds of Officers

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

#### Investigations and Reports by Probation Officers; Record of Receipts and Expenditures

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating to the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited

by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

Assistant District Attorney to Represent Juvenile  
Board and Probation Officers

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, is hereby authorized and directed, to assign an Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

Compensation of Juvenile Board Members

Sec. 15. The Judges of the several District and Criminal District Courts who are members of the juvenile board in such counties, on account of the additional duties imposed on them, are hereby allowed an additional compensation of Three Hundred Twenty-five Dollars (\$325.00) per month; and the County Judge in such counties, on account of the additional duties imposed on him, is hereby allowed an additional compensation of Seventy-five Dollars (\$75.00) per month. The compensation herein provided for is to be paid by the Commissioners Court in such counties and is to be in addition to all other compensation now allowed by law to such officers. The Commissioners Court, in its discretion, may also allow each member of the juvenile board an increase in such additional compensation in an amount not to exceed One Thousand Dollars (\$1,000.00) per year, but any increase must be allowed uniformly for all members of the Board. Provided, however, that in counties coming under the provisions of this Act, the members of the juvenile board shall not receive any compensation under or by virtue of Acts of 1917, 35th Legislature, Chapter 16, page 27, (Article 5139), as amended.

Partial Invalidity Clause

Sec. 16. It is further enacted that if any section, clause or part of this bill is found to be unconstitutional, or invalid, it is hereby declared to be the purpose and intention of the Legislature that such fact shall not in any manner invalidate or impair the remaining portions of this Act.

It is further provided that all laws and parts of laws in conflict with the provisions of this bill be and the same are hereby repealed to the extent of such conflict only.

Automobile or Allowance; Expenses

Sec. 17. The Commissioners Court is authorized to furnish such Probation Officers automobiles to be used in the official work of the Probation Department, and provide for the maintenance and operation of same.

If the Commissioners Court does not furnish automobiles to the Probation Officers in the discharging of their duties, it shall allow such

Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles. The Commissioners Court shall allow such Probation Officers such other expenses as it may think reasonable and proper which are incurred in the discharging of their duties subject to the approval of the County Auditor and such funds as are necessary to maintain and operate the office of the Probation Department.

[Acts 1937, 45th Leg., p. 76, ch. 46; Acts 1943, 48th Leg., p. 450, ch. 299, § 1; Acts 1945, 49th Leg., p. 251, ch. 185, §§ 1, 2; Acts 1947, 50th Leg., p. 782, ch. 389, § 1; Acts 1947, 50th Leg., p. 955, ch. 409, §§ 1, 2; Acts 1949, 51st Leg., p. 110, ch. 66, §§ 1, 2; Acts 1949, 51st Leg., p. 654, ch. 399, §§ 1, 2; Acts 1955, 54th Leg., p. 1228, ch. 490, §§ 1, 2.]

Savings Provisions

*See article 6819a-3, § 2.*

Art. 5142c. Juvenile Officers in Counties of  
190,000 to 224,000

Application of Act

Sec. 1. The provisions of this Act shall apply to all counties of the State of Texas containing a population of not less than one hundred and ninety thousand (190,000) inhabitants, nor more than two hundred and twenty-four thousand (224,000) inhabitants, according to the last preceding or any future Federal Census, general or special.

Composition of Board

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

Probation Officers

Sec. 3. There shall be one (1) Chief Probation Officer who shall be appointed by the Juvenile Board. Said Chief Probation Officer shall appoint Assistant Probation Officers, subject to confirmation by the Juvenile Board. The number of such Assistant Probation Officers shall be determined by the Juvenile Board subject to the approval of the Commissioners Court, provided such power of appointment and confirmation shall become effective immediately upon final passage of this Act, and the budget shall be amended, if necessary, to provide sufficient funds for the operation of this Act.

Terms of Office

Sec. 4. The term of office of Chief Probation Officers and Assistant Probation Officers shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

Compensation of Probation Officers; Expenses

Sec. 5. The compensation of all Probation Officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court. The Commissioners Court shall,

out of the General Fund of the county, provide funds for all necessary expenses needed to properly carry out the duties of the Juvenile Officer and his assistants, in such amounts as recommended by the Juvenile Board, subject to the approval of the Commissioners Court.

**Direction and Control; Rules and Regulations**

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

**Places and Institutions Subject to Control; Superintendents**

Sec. 7. That all homes, schools, farms, and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the Superintendent of each institution shall be appointed by the Chief Probation Officer for a term of two (2) years, and each such appointment shall be confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners Court.

**Records; Visitation and Reports**

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education and welfare of such minors as shall be directed by the Juvenile Board.

**Transfer of Custody**

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the custody of another person without an order of court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

**Visitation; Orders or Regulations**

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a

book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

**Suspension or Termination of Employment**

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

**Official Bonds**

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

**Investigations; Disbursements**

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating to the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

**Assistant District Attorneys**

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, are hereby authorized and directed, to assign as Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

**Compensation of Members of Board**

Sec. 15. The members composing said Juvenile Board in such counties, on account of the additional duties hereby imposed on them, are each hereby allowed an additional compensa-

tion of Seventy-five Dollars (\$75) per month to be paid by the Commissioners Court in such counties, and the same to be in addition to all other compensation now allowed by law to such officers.

**Repeals; Partial Invalidity**

Sec. 16. Any law or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict. If any clause, sentence, paragraph, or Section of this Act is declared invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Act shall, nevertheless, remain in full force and effect.

[Acts 1949, 51st Leg., p. 1197, ch. 608, § 1; Acts 1955, 54th Leg., p. 1158, ch. 441, § 1.]

**Art. 5142c-1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts**

**Appointment; Salary; Expenses**

Sec. 1. In Brazoria, Fort Bend, Matagorda, and Wharton counties, which comprise the 23rd and 130th Judicial Districts, the District Judges of such two judicial districts shall appoint a juvenile officer and such assistants as in their judgment may be necessary for a term of two years. The salaries of the juvenile officer and his assistants shall be fixed by the Commissioners Court of the four counties within the districts and shall be paid in equal monthly installments by such counties out of the General Fund thereof. Such juvenile officers and their assistants may be allowed such expenses as the Commissioners Court of such counties may think reasonable and proper.

**Compensation of District Judges**

Sec. 2. For the additional services and duties required by this Act, District Judges in any county coming under the terms of this Act shall receive in addition to all other compensation now provided by law, including all other compensation provided for service on Juvenile Boards, the sum of Seventy-five (\$75.00) Dollars per month out of the General Fund of such county.

**Records, Investigations and Reports**

Sec. 3. Such Juvenile Officer in such counties shall keep a record of all wife and child desertion cases wherein criminal charges are pending in said county, and shall immediately investigate the facts in each case and the defendant's ability to support his wife and/or children, and shall upon complaint that any payment for the support of the defendant's wife and/or children, has not been made as provided by order of the court, make investigation into the reasons why such payment is not being made; and shall make reports of all such matters, immediately upon the making of such investigation, to the District Attorney, the County Attorney, and Judge of the court in which such case is pending.

**Payments for Support of Wife and Children**

Sec. 4. All payments made under the order of the court in such county, for wife and child

desertion cases, for the support of wives and children, shall be paid to said Juvenile Officer working in said court as an officer of the court, and said Juvenile Officer shall disburse said funds for the benefit of the wife and/or children of the defendant, making such payment in such manner as shall appear to the court to be for the best interest of said wife and/or children.

**Bond of Juvenile Officer**

Sec. 5. Each such Juvenile Officer shall make a surety bond in some solvent surety company authorized to make such bonds in Texas, conditioned upon the faithful performance of the duties of his position and further conditioned upon his properly accounting for any moneys entrusted to him; said bond to be in such amount as may be fixed by the County Auditor and subject to the approval of the County Auditor.

**Record of Investigations, Receipts and Disbursements; Audit of Accounts**

Sec. 6. Such Juvenile Officer, in each county which comes under the terms of this Act, shall keep a complete record of all his investigations and of his receipts and disbursements of all moneys, which shall be a public record open to the inspection of the public; and it shall be the duty of the County Auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

**Divorce Suits; Investigations and Reports; Evidence**

Sec. 7. In all suits for divorce, in counties which come under the terms of this Act, where it appears from the petition or otherwise that the parties to such suit have a child or children under sixteen years of age, it shall be the duty of such Juvenile Officer, subject to the discretion of the court, to make a complete and thorough examination into the merits of the claim for divorce and to report his findings to the court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children and of the disposition that should be made of such child or children, and to make report thereof to the court prior to the trial of said case, and if desired by the court, to produce such evidence as may have been developed in connection with such matters in the trial of such case.

**Judge's Compensation Not Fees of Office**

Sec. 8. It is expressly provided hereby that the compensation allowed District Judges shall not be counted as fees of office.

**Partial Invalidity**

Sec. 9. If it shall be held that any part or parts of this Act are unconstitutional, then the remainder shall remain in full force and effect as law, independently and despite such holdings.

[Acts 1949, 51st Leg., p. 61, ch. 32; Acts 1969, 61st Leg., p. 1740, ch. 572, § 1, eff. June 11, 1969; Acts

1971, 62nd Leg., p. 1823, ch. 542, § 27, eff. Sept. 1, 1971.]

**Art. 5142c-2. Juvenile Probation Officers in Counties of Over 500,000**

**Chief Juvenile Probation Officer; Appointment; Term; Salary; Removal**

Sec. 1. In counties having a population of more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, regular or special, the County Juvenile Board shall appoint a Chief Juvenile Probation Officer for a term of two (2) years at a salary to be fixed by the Juvenile Board and approved by the Commissioners Court, to be paid in monthly installments by the county. The salary so fixed shall not be less than Seven Thousand, Five Hundred Dollars (\$7,500.00) per annum. The County Juvenile Board may remove the Chief Juvenile Probation Officer for just cause.

**Assistant Juvenile Probation Officers and other Employees; Appointment; Salaries; Automobiles**

Sec. 2. The Chief Juvenile Probation Officers in counties to which this Act applies are hereby authorized to appoint, and shall appoint, subject to the approval of the Juvenile Board, not less than thirty-two (32) Assistant Juvenile Probation Officers and other employees, in accordance with the following schedule, and shall fix their salary rates at not less than the following amounts: One (1) assistant, Five Thousand, Four Hundred Dollars (\$5,400.00) per annum; two (2) assistants, Four Thousand, Four Hundred Dollars (\$4,400.00) per annum each; three (3) assistants, Three Thousand, Nine Hundred Dollars (\$3,900.00) per annum each; five (5) assistants, Three Thousand, Seven Hundred Twenty Dollars (\$3,720.00) per annum each; eight (8) assistants, Three Thousand, Six Hundred Dollars (\$3,600.00) per annum each; and five (5) assistants, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum each. He shall employ: two (2) clerk-stenographers, at Three Thousand, One Hundred Eighty Dollars (\$3,180.00) per annum each; one (1) secretary, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum; one (1) clerk-stenographer, Three Thousand Dollars (\$3,000.00) per annum; three (3) clerk-typists, Two Thousand, Seven Hundred Dollars (\$2,700.00) per annum each; and one (1) clerk-typist, Two Thousand, Four Hundred Dollars (\$2,400.00) per annum; to be paid by the county in monthly or semi-monthly installments.

In addition to the salaries herein provided for the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, the Commissioners Court is authorized to furnish automobiles for the use of the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, to be used in the official work of the Juvenile Probation Office, and provide for the maintenance and operation of same; or if the Commissioners Court does not furnish

automobiles to the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers to be used in the discharge of their duties, it shall allow such Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles, such amounts and the reasonableness thereof to be determined by the Juvenile Board.

**Additional Probation Officers, Assistants and Employees**

Sec. 3. Should the Juvenile Board, in any county to which this Act applies, be of the opinion that the number of Juvenile Probation Officers, clerks stenographers, typists and other employees above provided for, is inadequate for the proper investigation, processing and handling of all cases referred to the office, or is inadequate for the efficient performance of the duties of the office, with the advice and approval of the Commissioners Court, it may appoint such additional Juvenile Probation Officers, assistants or employees as the Juvenile Board may determine; the salaries of such additional Juvenile Probation Officers, assistants and employees to be fixed by the Juvenile Board and approved by the Commissioners Court.

**Payments for Support of Wife or Children; Desertion Cases**

Sec. 4. All payments made under the order of the District and Criminal District Courts in such county in wife and child desertion cases for the support of wives and children shall be paid in, either to said Juvenile Probation Officer working in said courts as an officer of the courts, or the District Clerk, as the Juvenile Board may direct, and said Juvenile Probation Officer, or District Clerk, as the case may be, shall disburse said funds for the benefit of the wife and/or children of the defendant, making such payment in such manner as shall appear to the courts to be for the best interest of said wife and/or children.

**Bond of Probation Officer**

Sec. 5. In all cases wherein the Juvenile Board designates the Juvenile Probation Officer to receive said payments in wife and child desertion cases for the support of wives and children, said Juvenile Probation Officer shall make a surety bond in some solvent surety company authorized to make such bond in Texas, conditioned upon the faithful performance of the duties of his position, and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the Commissioners Court and subject to the approval of the Commissioners Court, the premium for such bond to be paid out of the general funds of the county.

**Records of Receipts and Disbursements**

Sec. 6. Said Juvenile Probation Officer in such county with a population in excess of five



hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, shall keep an accurate and complete record of all his receipts and disbursements of all moneys for the benefit of support of wives and children, which shall be a public record open to the inspection of the public; and it shall be the duty of the County Auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

**Partial Invalidity**

Sec. 7. If any clause, section or part of this Act is found to be unconstitutional or invalid, it is hereby declared to be the purpose and intention of the Legislature that such clause or section shall not in any manner invalidate or impair the remaining portions of this Act.

**Cumulative of Other Laws; Conflicting Laws Repealed**

Sec. 8. It is further provided that this law is cumulative of all other laws and parts of laws and repeals only those laws and parts of laws in conflict with this Act; and the same are hereby repealed to the extent of such conflicts only.

**Effective Date**

Sec. 9. This Act shall become operative on the first day of January, 1956.  
[Acts 1955, 54th Leg., p. 699, ch. 250.]

**Art. 5142c-3. Juvenile Officer for Counties Within 69th Judicial District**

(a) A juvenile officer may be employed to serve any or all counties at their request within the 69th Judicial District by appointment of the District Judge of the 69th Judicial District. The annual salary of such officer shall be fixed by the District Judge of the 69th Judicial District with approval of Commissioners Courts of the counties participating in an amount not to exceed Eight Thousand Dollars (\$8,000). The total salary of such juvenile officer shall be derived from the participating counties of the 69th Judicial District, with contributions among them in the same proportion as the population in each county using the services of such officer bears to the total population of all counties participating. Populations used shall be those of the last preceding Federal Census.

(b) Such juvenile officer may be reimbursed by each county in which he renders services to the county for actual expenses for meals and lodging while serving such county, and for travel expenses at the rate fixed by the Commissioners Court of each county contributing to his salary.

(c) Any school district, city or town within the 69th Judicial District may participate in the services of such juvenile officer by contributing to the total expenses of such officer in an amount fixed by the District Judge of the 69th Judicial District. When any school district, city or town contributes to the salary of

such juvenile officer, then the total amount to be contributed by the counties may be reduced in the amount contributed by any school district, city or town.

[Acts 1963, 58th Leg., p. 968, ch. 391, § 1.]

**Art. 5142c-4. Juvenile Officer for Grayson County**

Sec. 1. The commissioners court of Grayson County may appoint a juvenile officer, an assistant juvenile officer, and a clerk or secretary for the office of the juvenile officer.

Sec. 2. The commissioners court may pay the juvenile officer a salary of not more than \$650 per month and may allow him not more than 10 cents per mile for transportation expenses when he supplies his own automobile. The commissioners court may pay the assistant juvenile officer a salary of not more than \$525 per month and may allow him not more than 10 cents per mile for transportation expenses when he supplies his own automobile. The clerk or secretary shall receive a salary to be set by the commissioners court.

[Acts 1965, 59th Leg., p. 409, ch. 198, eff. May 18, 1965; Acts 1971, 62nd Leg., p. 929, ch. 143, § 1, eff. May 10, 1971.]

**Art. 5142d. Salaries of Juvenile or Probation Officers; How Fixed; Automobile or Allowance**

The Commissioners Courts of all counties in which Juvenile Officers or Probation Officers, or their assistants, are employed under existing laws of this State, shall fix the salaries to be paid such Juvenile Officers or Probation Officers and their assistants, and provide for their expenses, without limitation. Provided, that in counties where there is a Juvenile Board, said Board shall recommend the salary to be paid to such Juvenile Officer or Probation Officer and their assistants, which salary shall be approved by the Commissioners Court; and provided, further, that no Juvenile Officer or Probation Officer, or their assistants, shall be paid a salary less than that now provided by existing laws. The Commissioners Court is authorized in its discretion to furnish such Juvenile Officers or Probation Officers an automobile and provide an allowance for the expense of operating the same. The provisions of this Act shall not apply to those counties whose population exceeds one hundred and ninety thousand (190,000) according to the last or any future Federal Census.

[Acts 1949, 51st Leg., p. 653, ch. 338, § 1].

**Arts. 5143, 5143a. Repealed by Acts 1973, 63rd Leg., p. 1485, ch. 544, § 3, eff. Sept. 1, 1973**

Acts 1973, 63rd Leg., p. 1485, ch. 544, repealing these articles, enacts Title 3 of the Texas Family Code.  
See, now, Family Code, § 51.01 et seq.

**Art. 5143b. Clothing, Money and Transportation Furnished on Release from Gatesville and Gainesville Training Schools**

Sec. 1. Upon the discharge or parole of any person committed to the Gatesville State

School for Boys or the Gainesville State School for Girls, the Superintendent of the Institution from which such person is discharged or paroled shall provide them with a complete suit of suitable clothing, and Five Dollars (\$5) in money, and procure transportation for them to their homes, if resident of this State, or to the county in which they may have been convicted or to such other place in the State at which said discharged or paroled person may have procured employment or to a place where a suitable home has been found for such person.

Sec. 2. The furnishing of clothing and transportation and the payment of money may be made from appropriations for support and maintenance made to the Institution from which such person was discharged or paroled, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas.

[Acts 1945, 49th Leg., p. 155, ch. 106.]

#### Art. 5143c. State Youth Development Council

##### Purpose

Sec. 1. The purpose of this Act is to develop our State's most precious resource, its children and youth, by creating a Youth Development Council, first, to co-ordinate the State's departments and facilities in helping all communities develop and strengthen all child services, preventing delinquency and other types of social maladjustment by developing in all children the spiritual, mental, and physical resources necessary for complete citizenship responsibility and participation; and, secondly to administer the State's correctional facilities by providing a program of constructive training aimed at the rehabilitation and successful re-establishment in society of delinquent children.

##### Construction of the Act

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

##### Definitions

Sec. 3. As used in this Act:

(a) "Council" means the State Youth Development Council.

(b) "Chairman" means the Chairman of the State Youth Development Council.

(c) "Executive Committee" means the Executive Secretary of the Youth Development Council and two (2) members of the Council; one (1) of such members shall be appointed by the Council and the other shall be appointed by the Governor.

(d) "Secretary" means the Executive Secretary of the State Youth Development Council.

(e) "Child" or "Youth" means any resident of this State under twenty-one (21) years of age.

(f) "Delinquent Child" means any male or female so adjudged under provisions of

Sections 3 and 13, of Chapter 204 of the General Laws of the Regular Session of the Forty-eighth Legislature, 1943, (Sections 3 and 13, Article 2338-1, of Vernon's 1948 Statutes).<sup>1</sup>

(g) "Court" means the Juvenile Court.

<sup>1</sup> Repealed; see, now Family Code, § 51.01 et seq.

##### Council Established

Sec. 4. (a) The State Youth Development Council shall consist of nine (9) members selected as follows: six (6) members, who are influential citizens in their respective communities and recognized for their interest in the welfare of youth, shall be appointed by the Governor with the consent of the Senate, provided that citizens of Texas now serving as members of Boards or Commissions of the State may be eligible for appointment to this Council, service on said Council to be considered as an extension of their other official duties; and three (3) State officers—the Executive Director of the State Department of Public Welfare, the Director of the Texas Department of Public Safety, and the Chairman of the Texas Employment Commission, shall serve ex officio, the service by such State officials on the Council to be considered as additional duties of their present offices, and not as a separate office or employment.

The present members of the Council who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed.

(b) The duties of the six (6) appointed members first mentioned, in addition to serving as regular members of the Council, will be to provide the essential liaison with the public to enlist its support and participation, to channel the public's suggestions to the Council, and to keep the Council's sights trained on the major needs and problems of Texas youth. The term of office of the six (6) appointed members shall be six (6) years except that initially two (2) members shall be appointed for a six (6) year term, two (2) members for a four (4) year term, and two (2) members for a two (2) year term. Said members shall be eligible for reappointment. A vacancy for an unexpired term shall be filled by the Governor with the consent of the Senate. The lay members shall each receive a per diem of Ten Dollars (\$10) for not exceeding sixty (60) days for any fiscal year.

(c) Two (2) persons shall be employed by the Executive Committee subject to the approval of the Council to serve at the pleasure of the Council, and shall perform such duties as shall be designated by the Council. Said employees shall devote full time to the work of the Council.

(d) All members of the Council shall receive as expenses that sum provided by Statute for other State employees.

(e) The Council shall hold meetings at the call of its Chairman or Secretary or at the re-

quest of any three (3) members at such times and places as its Chairman may determine, but it shall hold not less than six (6) meetings annually.

(f) The State Youth Development Council shall have its office wherever the Council chooses, in such building as shall be designated and approved by the State Board of Control.

#### Organization of the Council

Sec. 5. (a) A member of the Council shall be designated by the Governor as its Chairman and he shall preside over all meetings of said Council. The Executive Director of the State Department of Public Welfare shall be Executive Secretary of the Council and shall be the executive and administrative officer of the Council. The Executive Secretary and two (2) other members of the Council appointed by that body shall constitute the Executive Committee of the Council, one (1) of which shall be a member of the Council appointed by the Governor.

(b) The Council shall be responsible for the adoption of all policies and may make all rules appropriate to the proper accomplishment of its functions. It is further provided that the Council may delegate any function or responsibility to the Executive Committee, and the Executive Committee is hereby authorized to transact all business on behalf of the Council.

(c) The powers and duties of the Council in respect to placement for training and treatment, transfer, release under supervision, and discharge of delinquent children committed to the Council shall be exercised and performed by the Executive Committee and may be delegated to the Executive Secretary. The Executive Secretary may delegate the powers and duties vested in him by this subsection to any member or employee of the Council, or State employee designated by the Council.

(d) All powers, duties, and functions granted to or imposed on the Council by any provision of law may be exercised and performed by the Secretary or by any member or employee designated or assigned by the Council or by the Secretary.

(e) For the exercise of all functions five (5) members of the Council shall constitute a quorum.

(f) Such citizens as the Council or the Governor may appoint shall constitute an Advisory Committee for the Council. It shall be the function of the Advisory Committee, upon request of the Council, to make recommendations and render advice to the Council concerning any matter coming within the scope of the Council's duties and functions. The service of any State official on the Advisory Committee shall be considered as additional duties of his office.

#### Major Duties and Functions of the Council

Sec. 6. The Council shall:

(a) Carry on a continuing study of the needs of all children in this State and seek

to focus public attention on such major needs.

(b) Make studies and provide programs and information to strengthen the family in meeting its responsibility as the fundamental school for integrity and for democratic life.

(c) Inquire into and make recommendations to the appropriate agencies, public or private, on any matter affecting the care, welfare, or behavior of children or youth.

(d) Develop constructive programs to provide, strengthen, and co-ordinate all essential services to all children throughout the State; and to that end co-operate with existing agencies and encourage the establishment of new agencies, both local and Statewide, having as their object service to youth.

(e) Assist local authorities of any county or municipality, when so requested by the governing body thereof, in surveying the needs of their youth and the extent to which these are not being met, and in developing, strengthening, and co-ordinating educational, welfare, health, recreational, and law enforcement programs which have as their object service to youth.

(f) Administer the diagnostic treatment and training, and supervisory facilities and services of the State for delinquent children committed to the State. Manage and direct State Training School facilities and provide for the co-ordination and combination of such facilities, if deemed advisable by the Council, and for the creation of new facilities within the total appropriations provided by the Legislature.

(g) Before each convening date of the Regular Session of the Legislature, make a report to the Governor and Legislature of its activities and accomplishments and of its findings as to the major needs of youth in this State. The report shall include specific recommendations for legislation, planned and drafted as part of an integrated, unified, and consistent program to serve the best interests of youth; and recommendations for the repeal of any conflicting, obsolete, or otherwise undesirable legislation affecting youth.

#### Co-operation by Other Departments

Sec. 7. To effectuate the purpose of this Act and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the State government and of all officers and employees of the State, when requested by the Council, to co-operate with it in all activities consistent with their proper function.

#### Transfer of Training Schools and Other Facilities

Sec. 8. The Council shall succeed to and be vested with all rights, powers, duties, facilities, personnel, records, and appropriations for the care and custody of delinquent children now

held by the Board of Control, including the Gatesville State School for Boys, the Gainesville State School for Girls, and the Brady State School for Negro Girls.

#### Employees

Sec. 9. In addition to those employees transferred to the Council by Section 8 of this Act, the Council may employ at compensation provided by the Legislature and within the limits of the amounts appropriated therefor, such medical, psychiatric, and other expert personnel, field representatives, supervisory, institutional, clerical and other employees as are necessary to discharge its duties. The Council shall have the power to remove any official or employee for cause, and the decision of the Council in such removals shall be final. The superintendents of the training schools shall have the right to dismiss training school employees with the approval of the Executive Committee. Any unexpended balance remaining in any item of appropriation made by the Legislature for the activity of the Council may, with the approval of the Legislative Audit Committee, be transferred and used for the purpose mentioned in any other item in this measure or in the appropriations made for this Council.

#### Power to Accept Gifts

Sec. 10. The Council may accept gifts, grants, or donations of money or of property from private sources to effectuate the purpose of this Act. Any and all funds so donated shall be placed in the State Treasury in a special fund called the Youth Development Fund and expended in the same manner as other State moneys are expended, upon warrants drawn by the Comptroller upon the order of the Council. Any of said moneys are hereby appropriated for the purpose of carrying out this Act.

#### Referrals from Federal Court

Sec. 11. The Council shall have the power to enter into agreements with the Federal government to accept children from the Federal Court for compensation upon which they agree.

#### Commitments by Juvenile Courts

Sec. 12. When any child is adjudged delinquent under provision of Section 13 of Chapter 204 of the General Laws of the Regular Session of the Forty-eighth Legislature, 1943, (Sec. 13, Article 2338-1, of Vernon's 1948 Statutes),<sup>1</sup> and the Court does not release such child unconditionally, or place him on probation or in a suitable public or private institution or agency other than a State Training School, the Court shall commit him to the Council, but may suspend the execution of the order of such commitment.

<sup>1</sup> Repealed; see, now Family Code, § 51.01 et seq.

#### Preliminary Disposition by Court

Sec. 13. (a) When the Court commits a child to the Council, it may order him conveyed forthwith to some place of detention approved,

or established, or designated by the Council, or may direct that he be left at liberty until otherwise ordered by the Council under such conditions as will insure his submission to any orders of the Council.

(b) The Court shall assign an officer or other suitable person to convey a child to any facility designated by the Council, provided that the person assigned to convey a girl must be a woman. The cost of conveying any child committed to the Council shall be paid by the county from which said child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

#### Effect of Appeal from Adjudication or Commitment

Sec. 14. The right of a child who has been adjudged delinquent to appeal from the adjudication or from the order of commitment shall not be affected by anything in this Act.

#### Notification and Duty to Furnish Information

Sec. 15. When a Court commits a child to the Council, such Court shall at once forward to the Council a certified copy of the order of commitment, and the Court, the probation officer, the prosecuting and police authorities, the school authorities and other public officials shall make available to the Council all pertinent information in their possession in respect to the case. The reports required by this Section shall, if the Council so requests, be made upon forms furnished by the Council or according to an outline furnished by it.

#### Probation Service to Juvenile Courts

Sec. 16. The Juvenile Court of any county not having a probation officer may request the Council, with its consent, to make an investigation and report to the Court respecting any child against whom an information or petition has been filed charging delinquency; and such Court may also, with the consent of the Council, place any child whom it has adjudged delinquent on probation under the supervision of the Council on such terms and conditions as the Court may prescribe.

#### Diagnosis of Committed Children

Sec. 17. (a) When a child has been committed to the Council, it shall, under rules established by it, forthwith examine and study him and investigate all pertinent circumstances of his life and behavior.

(b) The Council shall make periodic re-examination of all children within its control, except those on release under supervision or in foster homes. These examinations may be made as frequently as the Council considers desirable, and shall be made with respect to every child at intervals not exceeding one (1) year.

(c) The Council shall keep written records of all examinations and of the conclusions based thereon, and of all orders concerning the disposition or treatment of every child subject to its control. All records maintained by such

Council shall not be public records; but shall only be available upon the order of a District Court.

(d) Failure of the Council to examine a child committed to it, or to re-examine him within one (1) year of a previous examination, shall not of itself entitle the child to discharge from the control of the Council, but shall entitle him to petition the committing Court for an order of discharge, and the Court shall discharge him unless the Council upon due notice satisfies the Court of the necessity for further control.

#### Determination of Treatment

Sec. 18. When a child has been committed to the Council, it may:

(a) Permit him his liberty under supervision and upon such conditions as it believes conducive to acceptable behavior; or

(b) Order his confinement under such conditions as it believes best designed for his welfare and the interests of the public; or

(c) Order recommitment or renewed release as often as conditions indicate to be desirable; or

(d) Revoke or modify any order of the Council affecting a child, except an order of final discharge, as often as conditions indicate to be desirable; or

(e) Discharge him from control when it is satisfied that such discharge will best serve his welfare and the protection of the public.

#### Type of Treatment Permitted

Sec. 19. As a means of correcting the socially harmful tendencies of a child committed to it, the Council may:

(a) Require participation by him in moral, academic, vocational, physical, and correctional training and activities;

(b) Require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public;

(c) Provide such medical or psychiatric treatment as is necessary;

(d) Place boys who are physically fit in parks-maintenance camps or forestry camps or boys' ranches owned by the State or by the United States and require boys so housed to perform suitable conservation and maintenance work, provided that the boys shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the boys rather than to make the camps self-sustaining.

#### State Schools and Other Facilities

Sec. 20. The Council shall have the management, government and care of the Gatesville State School for Boys, the Gainesville State

School for Girls, the Brady State School for Negro Girls, and of all other facilities hereafter established by the State for the custody, diagnosis, care and training of delinquent children committed to the State.

#### Appointment of Superintendents and Employees

Sec. 21. The Council shall, from time to time, appoint a superintendent for each of said schools and institutions, and upon the recommendation of the superintendent, shall appoint all other officials, chaplains, teachers, and employees required at said schools and institutions and shall prescribe their duties. The superintendent of any school or other facility for the care of girls exclusively shall be a woman. The superintendent, with the consent of the Executive Committee, may discharge any employee for cause.

The salaries, compensation, and emoluments of the superintendents and subordinate officials, teachers, and employees shall be fixed as provided by the Legislature.

#### Rules and Purposes of Schools and Other Facilities

Sec. 22. The Council shall establish rules and regulations for the government of each school and other facilities and shall see that its affairs are conducted according to law and to such rules and regulations; but the purpose thereof and of all education, work, training, discipline, recreation, and other activities carried on in the schools and other facilities shall be to restore and build up the self-respect and self-reliance of the children and youth lodged therein and to qualify them for good citizenship and honorable employment.

#### The Superintendent

Sec. 23. The superintendent shall be a person of high moral character, education and training, and shall have the ability to develop and recommend an aggressive program for youth rehabilitation. He shall take the official oath and shall give a sufficient bond in the sum of Ten Thousand Dollars (\$10,000) payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Secretary of State.

#### Powers and Duties of the Superintendent

Sec. 24. The superintendent of each school or other facility shall:

(a) Have general charge of and be responsible for the welfare and custody of the children lodged therein, and for carrying out the rehabilitative program prescribed by the Council. He shall be a constant resident at the school or facility, and, under the direction of the Council, shall seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual and social needs of the children under his care as those needs would be met in an adequate home;

(b) See that the buildings and premises are kept in good sanitary order;

(c) Cause to be kept the books of the school or facility fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school or facility shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced, whether sold or consumed, and shall at all times be open for the inspection of the Council, State Auditor, or the Governor.

#### Religious Training

Sec. 25. The Council shall make provision for the religious and spiritual training of children in its custody and shall require all children in its diagnostic treatment or training facilities who are physically able to attend at least one (1) religious service of his own choice on each Sunday.

#### Power to Make Use of Existing Institutions and Agencies

Sec. 26. (a) For the purpose of carrying out its duties, the Council is authorized to make use of law enforcement, detention, supervisory, medical, educational, correctional, segregative, and other facilities, institutions and agencies, within the State. The Council may enter into agreements with the appropriate private or public officials for separate care and special treatment in existing institutions of persons subject to the control of the Council.

(b) Nothing herein shall be construed as giving the Council control over existing facilities, institutions or agencies other than those listed in Section 8, or as requiring such facilities, institutions or agencies to serve the Council inconsistently with their functions, or with the authority of their offices, or with the laws and regulations governing their activities; or as giving the Council power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to perform.

(c) Public institutions and agencies are hereby required to accept and care for delinquent children sent to them by the Council in the same manner as they would be required to do had such children been committed thereto by a Juvenile Court.

(d) The Council is hereby given the right and shall be required periodically to inspect all public and all private institutions and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the Council reasonable opportunity to examine or consult with children committed to the Council who are for the time being in the custody of the institution or agency.

(e) Placement of a child by the Council in any institution or agency not operated by the Council, or the release of such child from such

an institution or agency, shall not terminate the control of the Council over such child. No child placed in such institution or under such an agency may be released by the institution or agency without the approval of the Council.

#### Power to Establish Additional Facilities

Sec. 27. When funds are available for the purpose, the Council may:

(a) Establish and operate places for detention and diagnosis of all children committed to it;

(b) Establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and boys' ranches, necessary to classify and segregate and handle juvenile delinquents of different ages, habits and mental and physical condition according to their needs;

(c) Establish facilities to aid children given conditional release or discharged by the Council to find homes and employment and to lead socially acceptable lives.

#### Establishment of Camps and Payment of Wages

Sec. 28. The Council may establish forestry or parks-maintenance camps independently or in co-operation with the State Parks Board or with Federal departments and officials in charge of national forests and parks within this State. To this end, the Council may enter into contracts with Federal and State departments and officials. The Council may, in co-operation with such Federal and State departments or otherwise, provide for the payment of wages to the boys for the work they do while housed in such forestry or parks-maintenance camps, the sums earned to be paid in reparation, or to the parents or dependents of the boy, or to the boy in such manner and in such proportions as the Council directs.

#### Release Under Supervision

Sec. 29. The Council may release under supervision at any time, and may place children in its custody in their usual homes or in any situation or family that it has approved. The Council may, subject to appropriation, employ agents for investigating places and for visiting and supervising children on placement and may provide for the maintenance, in whole or in part, of any child so placed in charge of any person. The Council may, at any time until the expiration of the period of commitment, resume the care and custody of any child released under supervision.

#### Clothing, Money and Transportation Furnished on Release

Sec. 30. (a) The Council shall insure that each child it releases under supervision has suitable clothing, transportation to his home, or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules of the Council authorize.

(b) The expenditures for clothing and for transportation and the payment of money may be made from funds for support and maintenance appropriated to the Council or to the institution from which such child was released, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas.

**Escape and Apprehension**

Sec. 31. A boy or girl committed to the Council and placed by it in any institution or facility, who has escaped therefrom, or who has been released under supervision and broken the conditions thereof, may be arrested without a warrant by a sheriff, deputy sheriff, constable, police officer, or field officer employed or designated by the Council, and may be kept in custody in a suitable place and there detained until such boy or girl may be returned to the custody of the Council.

**Transfer of Mentally Ill, Feeble-Minded and Epileptics**

Sec. 32. Whenever the Council finds that any child committed to it is mentally ill, feeble-minded or an epileptic, the Executive Committee shall have the power to transfer children to any State institution for ninety (90) days observation or emergency treatment, and may make application to the proper court for a new commitment to the appropriate agency in accordance with law.

**Termination of Control**

Sec. 33. Every child committed to the Council as a delinquent, if not already discharged, shall be discharged or referred back to the court when he reaches his twenty-first birthday.

**Civil Rights**

Sec. 34. Commitment of a delinquent child to the custody of the Council shall not operate to disqualify such child in any future examination, appointment or application for public service under the government either of the State or of any political subdivision thereof.

**Use of Records**

Sec. 35. The Records of commitment to the Council shall be withheld from public inspection except with the consent of the Council, but such records concerning any child shall be open at all reasonable times to the inspection of the child, his or her parent or parents, guardian or attorney, or any of them. A commitment to the Council shall not be received in evidence or used in any way in any proceedings in any court except in subsequent proceedings for delinquency against the same child, and except in imposing sentence in any criminal proceedings against the same person.

**Evaluation and Improvement of Treatment Methods**

Sec. 36. The Council shall conduct continuing inquiry into the effectiveness of the treatment methods it employs in seeking the reformation of delinquent children. To this end the

Council shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the Council and shall tabulate, analyze, and publish biennially these data so that they may be used to evaluate the relative merits of methods of treatment. The Council shall co-operate with the Department of Public Welfare in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the disposition made thereof, and other information useful in determining the amount and causes of juvenile delinquency in this State.

**Assisting Escape**

Sec. 37. Whoever shall knowingly aid or assist any child in the custody of the Council to escape or to attempt to escape shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be imprisoned in jail not less than thirty (30) nor more than sixty (60) days, or both.

**Biennial Budget**

Sec. 38. The Secretary shall prepare and submit to the Council, for its approval, a biennial budget of all funds necessary to be appropriated by the Legislature for the Council for the purposes of this Act. The budget so prepared shall be submitted to and filed with the Board of Control by the Council in the form and manner and within the time prescribed by law.

**Constitutionality**

Sec. 41. If any Section, subdivision or clause of this Act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Act.

[Acts 1949, 51st Leg., p. 988, ch. 538; Acts 1955, 54th Leg., p. 1250, ch. 500, §§ 1, 2.]

**Art. 5143d. Texas Youth Council**

**Purpose**

Sec. 1. The purpose of this Act is to create a Texas Youth Council to administer the state's correctional facilities for delinquent children, to provide a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent by the courts of this state and committed to the Texas Youth Council, and to provide active parole supervision of such delinquent children until officially discharged from custody of the Texas Youth Council. It is the further purpose of this Act to delegate to the Texas Youth Council the supervision of the Corsicana State Home (State Orphan Home), the Texas Blind, Deaf and Orphan School, and the Waco State Home.

**Construction of the Act**

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

**Corsicana State Home; Change of Name**

Sec. 2a. The name of the State Orphan Home, located at Corsicana, Texas, is hereby

changed and shall hereafter be known and designated as the Corsicana State Home.

Definitions

Sec. 3. As used in this Act:

(a) "Texas Youth Council" or "Youth Council" means the Texas Youth Council as provided in this Act.

(b) "Chairman" means the Chairman of the Texas Youth Council.

(c) "Executive Director" means the Executive Director of the Texas Youth Council appointed and employed by said Youth Council.

(d) "Delinquent Child" means any male or female so adjudged under provisions of Sections 3 and 13 of Chapter 204 of the General Laws of the Regular Session of the 48th Legislature, 1943. (Sections 3 and 13, Article 2338-1, codified in Vernon's Civil Statutes, 1948.)<sup>1</sup>

(e) "Court" means the Juvenile Court.

<sup>1</sup> Repealed; see, now Family Code, § 51.01 et seq.

Texas Youth Council Established

Sec. 4. (a) There is hereby created a Texas Youth Council to consist of three (3) members to be appointed by the Governor with the consent of the Senate. Members of the Texas Youth Council shall be influential citizens in their respective communities who are recognized for their interest in youth. Citizens of Texas now serving as members of the State Youth Development Council may be eligible for appointment to the Texas Youth Council.

(b) The term of office of members of the Texas Youth Council shall be six (6) years, except that initially one (1) member shall be appointed for a six (6) year term; one (1) member for a four (4) year term; and one (1) member for a two (2) year term. Members shall be eligible for reappointment. A vacancy for an unexpired term shall be filled by the Governor with the consent of the Senate. Members of the Youth Council shall each receive a per diem of Ten Dollars (\$10.00) for not exceeding sixty (60) days for any fiscal year.

(c) All members of the Texas Youth Council and the Executive Director appointed by them shall receive as expenses the actual expense incurred while on state business for the Texas Youth Council.

(d) The Texas Youth Council shall hold meetings at the call of its Chairman, selected or elected by it, or at the request of any two (2) members at such times and places as its Chairman may determine, but it shall not hold less than four (4) meetings annually.

(e) The Texas Youth Council shall have its office wherever the Youth Council chooses, in such building as shall be designated and approved by the State Board of Control.

(f) The Texas Youth Council shall assume the administrative control, supervision, direction and operation of all facilities, institutions,

training of state wards and parole supervision of state wards now under the control of the State Youth Development Council and shall further assume the administrative control and supervision of the Corsicana State Home, the Texas Blind, Deaf and Orphan School, and the Waco State Home.

(g) An Executive Director shall be employed by the Texas Youth Council to serve at the pleasure of said Texas Youth Council and shall perform such duties as shall be designated by the Texas Youth Council. Said Executive Director shall devote full time to the work of the Texas Youth Council.

Organization, Powers and Responsibilities of the Texas Youth Council

Sec. 5. (a) A member of the Texas Youth Council shall be appointed or elected as Chairman and he shall preside over all meetings of said Youth Council.

(b) The Texas Youth Council shall be responsible for the adoption of all policies and shall make all rules appropriate to the proper accomplishment of its functions.

(c) The powers and duties formerly held by the State Youth Development Council in respect to the custody, training, treatment, parole, transfer, release under supervision and discharge of delinquent children committed to the state shall be exercised and performed by the Texas Youth Council and may be delegated to the Executive Director. The Executive Director may delegate the powers and duties vested in him in this subsection to any employee of the Texas Youth Council or employee designated by the Texas Youth Council to assume such duties or powers.

(d) All powers, duties and functions other than those specified in subsection (c), granted or imposed on the Texas Youth Council by any provision of law, may be exercised and performed by the Executive Director or any member or employee designated or assigned by the Texas Youth Council or by the Executive Director.

(e) For the exercise of other functions than those specified in subsection (c), two (2) members of the Texas Youth Council shall constitute a quorum.

Major Duties and Functions of the Texas Youth Council

Sec. 6. The Texas Youth Council shall:

(a) Carry on a continuing study of the problem of juvenile delinquency in this state and seek to focus public attention on special solutions to this problem;

(b) Cooperate with all existing agencies and encourage the establishment of new agencies, both local and statewide, if their object is services to delinquent and pre-delinquent youth of this state;

(c) Assist local authorities of any county or municipality when requested by the governing body thereof in the developing, strengthening and coordination of educa-



tional, welfare, health, recreational or law enforcement programs which have as their object the prevention of juvenile delinquency and crime;

(d) Administer the diagnostic treatment and training and supervisory facilities and services of the state for delinquent children committed to the state. Manage and direct state training school facilities and provide for the coordination and combination of such facilities, as deemed advisable by the Texas Youth Council, and for the creation of new facilities within the total appropriation provided by the Legislature; exercise administrative control and supervision over all other institutions and facilities under its jurisdiction;

(e) Before each convening date of the Regular Session of the Legislature, make a report to the Governor and Legislature of its activities and accomplishments and of its findings as to its major needs relative to the handling of the children committed to it by courts of the state. The report shall include specific recommendations for legislation, planned and drafted as part of an integrated, unified and consistent program to serve the best interest of the state and the youth committed to the Texas Youth Council; and recommendations for the repeal of any conflicting, obsolete or otherwise undesirable legislation affecting youth.

#### Cooperation by Other Departments

Sec. 7. To effectuate the purpose of this Act and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the state government and of all officers and employees of the state, when requested by the Texas Youth Council, to cooperate with it in all activities consistent with their proper function.

#### Transfer of Facilities

Sec. 8. The Texas Youth Council shall succeed to and be vested with all rights, powers, duties, facilities, personnel, records and appropriations, relating to the care, custody, and control of children, now held by (a) the State Youth Development Council, including the Gatesville State School for Boys, the Gainesville State School for Girls, and the Crockett State School for Negro Girls; (b) the Board for Texas State Hospitals and Special Schools in respect to the Corsicana State Home and Texas Blind, Deaf and Orphan Home; and (c) the Department of Public Welfare with respect to the Waco State Home.

#### Employees

Sec. 9. In addition to those employees transferred to the Texas Youth Council by Section 8 of this Act, the Youth Council may employ at compensation provided by the Legislature and within the limits of the amounts appropriated therefor, such medical, psychiatric, and other expert personnel, parole officers, su-

pervisory, institutional, clerical and other employees as are necessary to discharge its duties. The Youth Council shall have the power to remove any employee for cause, and the decision of the Youth Council in such removals shall be final. The superintendents of the schools under the jurisdiction of the Texas Youth Council shall have the right to dismiss school employees with the approval of the Executive Director.

#### Admission of Children

Sec. 9a. Subject to such policies as the Texas Youth Council may adopt, the Corsicana State Home, the West Texas Children's Home at Pyote, and the Waco State Home may accept for admission any child between the ages of three (3) years and eighteen (18) years who is a full orphan, a half-orphan, or a dependent and neglected child, and may offer, if needed, care, treatment, education, and training to such children as are admitted thereto until they have reached the age of twenty-one (21) years.

#### Power to Accept Gifts

Sec. 10. The Youth Council may accept gifts, grants, or donations of money or of property from private sources to effectuate the purpose of this Act. Any and all funds so donated shall be placed in the State Treasury in a special fund called the Texas Youth Council Fund and expended in the same manner as other state moneys are expended, upon warrants drawn by the Comptroller upon the order of the Youth Council. Any of said moneys are hereby appropriated for the purpose of carrying out this Act, and any moneys in the Youth Development Fund are hereby transferred to the Texas Youth Council Fund.

#### Referrals from Federal Court

Sec. 11. The Texas Youth Council shall have the power to enter into agreements with the federal government to accept children from the Federal Court for compensation upon which they agree.

#### Commitments by Juvenile Courts

Sec. 12. When any child is adjudged delinquent under provisions of Section 13 of Chapter 204 of the General Laws of the Regular Session of the 48th Legislature, 1943, (Section 13, Article 2338-1, Vernon's Texas Civil Statutes, 1948) <sup>1</sup> and the court does not release such child unconditionally, or place him on probation or in a suitable public or private institution or agency other than a state training school, the court shall commit him to the Texas Youth Council, but may suspend the execution of the order of such commitment.

<sup>1</sup> Repealed; see, now Family Code, § 51.01 et seq.

#### Preliminary Disposition by Court

Sec. 13. (a) When the court commits a delinquent child to the Youth Council, it may order him conveyed forthwith to some place of detention approved, or established, or designated by the Youth Council, or may direct that he

be left at liberty until otherwise ordered by the Youth Council under such conditions as will insure his submission to any orders of the Youth Council.

(b) The court shall assign an officer or other suitable person to convey such a child to any facility designated by the Youth Council, provided that the person assigned to convey a girl must be a woman. The cost of conveying any such child committed to the Youth Council shall be paid by the county from which said child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

#### Effect of Appeal from Adjudication or Commitment

Sec. 14. The right of a child who has been adjudged delinquent to appeal from the adjudication or from the order of commitment shall not be affected by anything in this Act.

#### Notification and Duty to Furnish Information

Sec. 15. When a court commits a child to the Youth Council as a delinquent child, such court shall at once forward to the Youth Council a certified copy of the order of commitment, and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the Youth Council all pertinent information in their possession in respect to the case. The reports required by this section shall, if the Youth Council so requests, be made upon forms furnished by the Youth Council or according to an outline furnished by it.

#### Diagnosis of Committed Children

Sec. 16. (a) When a delinquent child has been committed to the Youth Council, it shall, under rules established by it, forthwith examine and study him and investigate all pertinent circumstances of his life and behavior.

(b) The Youth Council shall make periodic re-examination of all such children within its control, except those on release under supervision or in foster homes. These examinations may be made as frequently as the Youth Council considers desirable, and shall be made with respect to every child at intervals not exceeding one (1) year.

(c) The Youth Council shall keep written records of all examinations and of the conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent child subject to its control. All records maintained by such Youth Council shall not be public records, but shall only be available upon the order of a District Court.

(d) Failure of the Youth Council to examine a delinquent child committed to it, or to re-examine him within one (1) year of a previous examination, shall not of itself entitle the child to discharge from the control of the Youth Council, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless the

Youth Council upon due notice satisfies the court of the necessity for further control.

#### Determination of Treatment

Sec. 17. When a child has been committed to the Youth Council as a delinquent child, the Council may:

(a) Permit him his liberty under supervision and upon such conditions it believes conducive to acceptable behavior; or

(b) Order his confinement under such conditions as it believes best designed for his welfare and the interest of the public; or

(c) Order recommitment or renewed release as often as conditions indicate to be desirable; or

(d) Revoke or modify any order of the Council affecting a child, except an order of final discharge, as often as conditions indicate to be desirable; or

(e) Discharge him from control when it is satisfied that such discharge will best serve his welfare and the protection of the public.

#### Type of Treatment Permitted

Sec. 18. As a means of correcting the socially harmful tendencies of a delinquent child committed to it, the Youth Council may:

(a) Require participation by him in moral, academic, vocational, physical and correctional training and activities;

(b) Require such modes of life and conduct as may seem best adapted to fit him for return to full liberty without danger to the public;

(c) Provide such medical or psychiatric treatment as is necessary;

(d) Place boys who are physically fit in parks-maintenance camps or forestry camps or boys' ranches owned by the state or by the United States and require boys so housed to perform suitable conservation and maintenance work; provided that the boys shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the boys rather than to make the camps self-sustaining.

#### State Schools and Other Facilities

Sec. 19. The Youth Council shall have the management, government and care of the Gatesville State School for Boys, the Gainesville State School for Girls, the Crockett State School for Negro Girls, and of all other facilities hereafter established by the state for the custody, diagnosis, care, training and parole supervision of delinquent children committed to the state.

#### Appointment of Superintendents and Employees

Sec. 20. The Youth Council shall, from time to time, appoint a superintendent for each of said schools and institutions, and upon the recommendation of the superintendent shall ap-

point all other officials, chaplains, teachers, and employees required at said schools and institutions and shall prescribe their duties. The superintendent of any school or other facility for the care of girls exclusively shall be a woman. The superintendent, with the consent of the Executive Director, may discharge any employee for cause.

The salaries, compensation, and emoluments of the superintendents and subordinate officials, teachers, and employees shall be fixed as provided by the Legislature.

#### Rules and Purposes of Schools and Other Facilities

Sec. 21. The Youth Council shall establish rules and regulations for the government of each of such schools and other facilities and shall see that its affairs are conducted according to law and to such rules and regulations; but the purpose thereof and of all education, work, training, discipline, recreation, and other activities carried on in the schools and other facilities shall be to restore and build up the self-respect and self-reliance of the children and youth lodged therein and to qualify them for good citizenship and honorable employment.

#### The Superintendent

Sec. 22. The superintendent shall be a person of high moral character, education and training, and shall have the ability to develop and recommend an aggressive program for youth rehabilitation. He shall take the official oath and shall give bond in the sum of Ten Thousand Dollars (\$10,000.00) payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Attorney General.

#### Powers and Duties of the Superintendents

Sec. 23. The superintendent of each school or other facility shall:

(a) Have general charge of and be responsible for the welfare and custody of the children lodged therein, and for carrying out the rehabilitation program prescribed by the Council. Under the direction of the Youth Council, he shall seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual and social needs of the children under his care as those needs would be met in an adequate home;

(b) See that the buildings and premises are kept in good sanitary order;

(c) Cause to be kept the books of the school or facility fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school or facility shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced, whether sold or consumed, and shall at all times be

open for the inspection of the Youth Council, State Auditor, or the Governor.

#### Religious Training

Sec. 24. The Youth Council shall make provision for the religious and spiritual training of children in its custody and shall require all children in its diagnostic treatment or training facilities who are physically able to attend at least one (1) religious service of his own choice on each Sunday.

#### Power to Make Use of Existing Institutions and Agencies

Sec. 25. (a) For the purpose of carrying out its duties, the Youth Council is authorized to make use of law enforcement, detention, supervisory, medical, educational, correctional, segregative, and other facilities, institutions and agencies within the state. When funds are available for the purpose, the Youth Council may enter into agreements with the appropriate private or public official for separate care and special treatment in existing institutions of persons subject to the control of the Youth Council.

(b) Nothing herein shall be construed as giving the Youth Council control over existing facilities, institutions or agencies other than those listed in Section 8, or as requiring such facilities, institutions or agencies to serve the Youth Council inconsistently with their functions, or with the authority of their offices, or with the laws and regulations governing their activities; or as giving the Youth Council power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to perform.

(c) The Youth Council is hereby given the right and shall be required periodically to inspect all public and all private institutions and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the Youth Council reasonable opportunity to examine or consult with children committed to the Youth Council who are for the time being in the custody of the institution or agency.

(d) Placement of a child by the Youth Council in any institution or agency not operated by the Youth Council, or the release of such child from such an institution or agency, shall not terminate the control of the Youth Council over such child. No child placed in such institution or under such an agency may be released by the institution or agency without the approval of the Youth Council.

#### Contracts with Counties for Probation or Parole Services; Fee; Reports

Sec. 25A. (a) The Youth Council and each county may make an agreement to provide services of the county's juvenile probation department for the supervision of delinquent children within the county who are on temporary furlough or released under supervision from a facility of the Youth Council.

(b) Under an agreement, the Youth Council shall pay to the county One Dollar (\$1.00) for each day for each child subject to the agreement within the county; except that the maximum payment for each month shall be Twenty Dollars (\$20.00) per child within the county more than twenty (20) days during the month. The payments shall be made to the county treasurer on a quarterly schedule.

(c) No payments may be made for any period after a child has:

(1) been discharged from the custody of the Youth Council;

(2) returned to a facility of the Youth Council; or

(3) transferred his residence to another county or state.

(d) Each county having an agreement with the Youth Council under this section shall make reports to the Youth Council on the status and progress of each child for which the county is receiving payments. The reports shall be made at the times and in the manner specified by the agreement.

#### Power to Establish Additional Facilities

Sec. 26. When funds are available for the purpose, the Youth Council may:

(a) Establish and operate places for detention and diagnosis of all delinquent children committed to it;

(b) Establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and boys' ranches, necessary to classify and segregate and handle juvenile delinquents of different ages, habits and mental and physical condition according to their needs;

(c) Establish active parole supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become re-established in the community and to lead socially acceptable lives.

#### Release Under Supervision

Sec. 27. The Youth Council may release under supervision at any time, and may place delinquent children in its custody in their usual homes or in any situation or family that it has approved. The Youth Council may, subject to appropriation, employ parole officers for investigating, placing, supervising and otherwise directing the activities of a parolee so as to insure his/her adjustment to society in accordance with rules and regulations established by the Texas Youth Council, and work with local organizations, clubs, and agencies in formulating plans and procedures for the prevention of juvenile delinquency. The Youth Council may, at any time, until finally discharged by the Youth Council, resume the care and custody of any child released under parole supervision.

#### Clothing, Money and Transportation Furnished on Release

Sec. 28. (a) The Youth Council shall insure that each delinquent child it releases under supervision has suitable clothing, transportation to his home, or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules of the Youth Council authorize.

(b) The expenditure for clothing and for transportation and the payment of money may be made from funds for support and maintenance appropriated to the Youth Council or to the institution from which such child was released, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas.

#### Escape and Apprehension

Sec. 29. A boy or girl committed to the Youth Council as a delinquent child and placed by it in any institution or facility, who has escaped therefrom, or who has been released under supervision and broken the conditions thereof, may be arrested without a warrant by a sheriff, deputy sheriff, constable, police officer, or parole officer employed or designated by the Youth Council, and may be kept in custody in a suitable place and there detained until such boy or girl may be returned to the custody of the Youth Council.

#### Transfer of Mentally Ill, Feeble-Minded and Epileptics

Sec. 30. Whenever the Youth Council finds that any delinquent child committed to it is mentally ill, feeble-minded or an epileptic, the Youth Council shall have the power to return such child to the court of original jurisdiction for appropriate disposition or shall have the power to request the court in the county in which the training school is located to take such action as the condition of the child requires. In no case will the Youth Council upon the determination of such a finding related to any such child committed to its custody delay returning the child to the committing county or make application to the proper court for appropriate handling of the case beyond the minimum time necessary for the removal of the child from its facilities in accordance with law.

#### Termination of Control

Sec. 31. Every child committed to the Youth Council as a delinquent, if not already discharged, shall be discharged from custody of the Youth Council when he reaches his twenty-first birthday.

#### Civil Rights

Sec. 32. Commitment of a delinquent child to the custody of the Youth Council shall not operate to disqualify such child in any future examination, appointment or application for public service under the government either of the state or of any political subdivision thereof.

#### Use of Records

Sec. 33. The records of commitment of a delinquent child to the Youth Council shall be

withheld from public inspection except with the consent of the Youth Council, but such records concerning any child shall be open at all reasonable times to the inspection of the child, his or her parents or parent, guardian, or attorney, or any of them. A commitment to the Youth Council shall not be received in evidence or used in any way in any proceedings in any court except in subsequent proceedings for delinquency against the same child, and except in imposing sentence in any criminal proceedings against the same person.

#### Records and Information

Sec. 34. The Youth Council shall conduct continuing inquiry into the effectiveness of the treatment methods it employs in seeking the reformation of delinquent children. To this end the Youth Council shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the Youth Council and shall tabulate, analyze, and publish biennially these data so that they may be used to evaluate the relative merits of methods of treatment. The Youth Council shall cooperate with courts, private and public agencies in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the disposition made thereof, and other information useful in determining the amount and causes of juvenile delinquency in this state.

#### Assisting Escape

Sec. 35. Whoever shall knowingly aid or assist any delinquent child in the custody of the Youth Council to escape or to attempt to escape shall be subject to the penalties provided in Article 334 of the Penal Code.

#### Biennial Budget

Sec. 36. The Executive Director shall prepare and submit to the Youth Council, for its approval, a biennial budget of all funds necessary to be appropriated by the Legislature for the Youth Council for the purposes of this Act. The budget so prepared shall be submitted and filed by the Youth Council in the form and manner and within the time prescribed by law.

#### Transfer of Appropriations

Sec. 37. There is hereby transferred to the Texas Youth Council all moneys appropriated for the two-year period ending August 31, 1959, for the Central Office of the Youth Development Council; the Corsicana State Home (State Orphan Home); the Blind, Deaf and Orphan School; the Waco State Home; the Gatesville School for Boys; the Gainesville School for Girls; and the Colored Girls Training School. The appropriations for the specific institutions, hereby transferred, shall be expended in accordance with the provisions of House Bill 133, Acts of the Regular Session,

55th Legislature,<sup>1</sup> and this Act. The appropriations for the Central Office of the Youth Development Council shall be used for the payment of per diem and expenses of Texas Youth Council members, salaries of the Director and of other personnel employed in the Central Office of the Youth Council, and all other expenses incidental to the maintenance and operation of the Central Office. Salaries paid to all personnel in the Central Office during the biennium shall be fixed by the Youth Council in keeping with standards fixed in the biennial appropriation Act for similar positions. Travel expenses shall be subject to the provisions of the biennial appropriation Act.

[Acts 1957, 55th Leg., p. 660, ch. 281; Acts 1969, 61st Leg., p. 1594, ch. 488, § 2, eff. June 10, 1969; Acts 1973, 63rd Leg., p. 1785, ch. 658, § 1, eff. June 16, 1973.]

<sup>1</sup> Texas Session Laws, ch. 385, p. 870.

#### Art. 5143e. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

#### Art. 5143f. County Agreements for Joint Probation Services, Detention and Diagnostic Facilities for Juvenile Delinquents

Sec. 1. The purpose of this Act is to enable counties to jointly provide better probation services and detention and diagnostic facilities for juvenile delinquents than the counties, acting singly, would be able to provide.

Sec. 2. The commissioners courts of two or more counties may enter into cooperative agreements to acquire, maintain, and operate detention and diagnostic facilities for juvenile delinquents. The counties are authorized to maintain, improve, and operate the property so acquired and all improvements thereon and to sell or lease all or any part of the property and improvements in accordance with the terms of the cooperative agreement. The counties are authorized to accept any donation or gift donated for the purposes of acquiring, maintaining, or operating the juvenile facilities.

Sec. 3. In accordance with the terms of the cooperative agreement, each county which is a party to the agreement may issue the bonds of the county in accordance with the provisions of Chapter 2, Title 22, Revised Civil Statutes of Texas, as amended,<sup>1</sup> for the purpose of acquiring, maintaining, and operating the facilities for juvenile delinquents.

Sec. 4. The commissioners courts of two or more counties may enter into cooperative agreements to provide probation services for juvenile delinquents. The cooperative agreement shall set forth in detail how the probation services are to be provided and financed.

[Acts 1967, 60th Leg., p. 892, ch. 388, eff. Aug. 28, 1967.]

<sup>1</sup> Article 718 et seq.

# TITLE 83

## LABOR

Chapter	Article
1. Department .....	5144
2. Labor Organizations .....	5152
3. Payment of Wages .....	5155
4. Contractor's Performance and Payment Bonds .....	5160
5. Hours of Labor .....	5165
6. Female Employees .....	5168
7. Protection of Health and Safety .....	5173
8. Child Labor .....	5181
9. Protection of Workmen on Buildings .....	5182
9A. Occupational Safety .....	5182a
10. Industrial Commission .....	5183
10A. Texas Relief Commission [Repealed] .....	5190a
11. Stevedores .....	5191
12. Restrictions on Labor .....	5196
13. Employment Agents .....	5208
14. Unemployment Compensation .....	5221b-1
15. Inspection of Steam Boilers .....	5221c
16. Miscellaneous Provisions .....	5221d

### CHAPTER ONE. DEPARTMENT

Article	
5144.	Appointment of Commissioner.
5145.	Duties of Commissioner.
5145a.	Duties of Commissioner.
5146.	Report.
5147.	Preservation of Records.
5147a.	Duty of Owner of Factory, etc.
5148.	May Enter Factories, etc.
5148a.	May Enter Factories, etc.
5149.	To Report Violations.
5150.	To Take Testimony.
5150a.	Failure to Testify Before Commissioner; Penalty.
5151.	Expenses.
5151a.	Change of Name.
5151b.	Disclosing Name of Informant; Penalty.
5151c.	Penalty for Interfering With Bureau.

#### Change of Name

*Acts 1973, 63rd Leg., p. 1185, ch. 434, classified as article 5151a, changed the name of the Bureau of Labor Statistics to the Department of Labor and Standards.*

#### Art. 5144. Appointment of Commissioner

A Commissioner of Labor Statistics, whose office shall be in the Capitol Building, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office.

[Acts 1925, S.B. 84.]

#### Art. 5145. Duties of Commissioner

The Bureau of Labor Statistics<sup>1</sup> shall be under the charge and control of the Commissioner of Labor Statistics. The Commissioner shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, especially as bearing upon the commercial, social, educational, and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in the factories and other places of employment, the labor of women and children, and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Said Commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interest therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry. He shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the State, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. Except as hereinafter provided he shall safely keep and deliver to his successor all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office.

[Acts 1925, S.B. 84.]

<sup>1</sup>Name changed to Texas Department of Labor and Standards; see art. 5151a.

#### Art. 5145a. Duties of Commissioner

The Commissioner of Labor Statistics shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, and especially as bearing upon the commercial, social, educational and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of women and children and the hours of labor exacted of them, and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive indus-

tries of this State, and of the persons employed therein.

[1925 P.C.]

#### Art. 5146. Report

In each biennial report, the Commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and their employees, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employees living in rented houses, with the average rental paid, the value of property owned by such employees, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical. Such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as may be provided by law.

[Acts 1925, S.B. 84.]

#### Art. 5147. Preservation of Records

No report or return made to the bureau under the provisions of this chapter or the Penal Code, and no schedule, record or document gathered or returned by its officers or employees shall be destroyed within two years of the collection or receipt thereof. At the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the Commissioner to be of no further value, shall be destroyed, if the permission of the Governor therefor be first obtained.

[Acts 1925, S.B. 84.]

#### Art. 5147a. Duty of Owner of Factory, etc.

Every owner, manager and superintendent of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment or place, where five or more persons are employed at work, shall make to the Bureau of Labor Statistics<sup>1</sup> upon blanks to be furnished by such bureau, such reports and returns as said bureau may require for the purpose of securing such labor statistics as are contemplated by this chapter. Such reports and returns shall be made under oath within not to exceed sixty days from the receipt of the blanks furnished by the Commissioner or bureau. Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall neglect or refuse to

make such reports and returns as are required by any provision of this chapter shall be fined not to exceed one hundred dollars, or be imprisoned in jail not to exceed thirty days.

[1925 P.C.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

#### Art. 5148. May Enter Factories, etc.

Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the Commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employees from danger and the sanitary conditions in and around such building or place, of all of which the said Commissioner shall make and return to the Bureau of Labor Statistics a true and detailed record in writing.

[Acts 1925, S.B. 84.]

#### Art. 5148a. May Enter Factories, etc.

Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with any provision of this chapter, the Commissioner of Labor Statistics shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment, or place where five or more persons are employed at work, when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employes from danger and the sanitary conditions in and around such building or place.

[1925 P.C.]

#### Art. 5149. To Report Violations

If the Commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employees, or the preservation of health, or in any other way affecting the employes, he shall at once give written notice of the facts to the proper county or district attorney.

[Acts 1925, S.B. 84.]

#### Art. 5150. To Take Testimony

The Commissioner shall have power to issue subpoenas and take testimony in all matters relating to the duties herein required of said Bureau. Such testimony must be taken in the vicinity of the residence or office of the person testifying.

[Acts 1925, S.B. 84.]

**Art. 5150a. Failure to Testify Before Commissioner; Penalty**

The Commissioner of the Bureau of Labor Statistics<sup>1</sup> shall have power to issue subpoenas, and take testimony in all matters related to the duties required of the said bureau, but said testimony must be taken in the vicinity of the residence or office of the person testifying. Any person duly subpoenaed under any provision of this chapter who shall wilfully neglect or fail to attend or testify at the time and place mentioned in the subpoena shall be fined not exceeding fifty dollars or be imprisoned in jail not to exceed thirty days. No witness shall be compelled to go outside of the county in which he resides in order to testify.

[1925 P.C.]

<sup>1</sup>Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5151. Expenses**

The Commissioner shall be allowed necessary postage, stationery, printing, and other expenses to transact the business of the Bureau, and he and any employé of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this chapter, and within the limits of the appropriations made therefor.

[Acts 1925, S.B. 84.]

**Art. 5151a. Change of Name**

(a) The name of the Bureau of Labor Statistics is changed to the "Texas Department of Labor and Standards."

(b) Wherever the name Bureau of Labor Statistics appears in any legislative Act in this state, such name shall hereafter mean and apply to the Texas Department of Labor and Standards.

[Acts 1973, 63rd Leg., p. 1185, ch. 434, § 1, eff. Aug. 27, 1973.]

**Art. 5151b. Disclosing Name of Informant; Penalty**

In the reports made by the Commissioner to the Governor the names of persons, firms or corporations supplying information under any provision of this chapter shall not be disclosed, nor shall any such name be communicated to any person not employed in the Bureau of Labor Statistics.<sup>1</sup> Any officer or employé of such bureau violating any provision of this article, shall be fined not to exceed five hundred dollars, or be imprisoned in jail not to exceed ninety days.

[1925 P.C.]

<sup>1</sup>Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5151c. Penalty for Interfering With Bureau**

Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are em-

ployed at work, who shall refuse to allow any officer or employé of the said Bureau of Labor Statistics<sup>1</sup> to enter the same or to remain therein for such time as is reasonably necessary, or who shall hinder any such officer or employé, or in any way prevent or deter him from collecting information, as to any matter consistent with any duty imposed on him by law, shall be fined not to exceed one hundred dollars, or imprisoned in jail not to exceed sixty days.

[1925 P.C.]

<sup>1</sup>Name changed to Texas Department of Labor and Standards; see art. 5151a.

**CHAPTER TWO. LABOR ORGANIZATIONS****Article**

- 5152. Right to Organize.
- 5153. Other Rights and Privileges.
- 5154. Organizations Excepted.
- 5154a. Labor Unions, Regulation of.
- 5154b. Liability of Labor Organizations for Damages.
- 5154c. Public Employees, Collective Bargaining Contracts With Organizations Representing; Strikes; Loss of Civil Service and Other Rights.
- 5154c-1. The Fire and Police Employee Relations Act.
- 5154d. Picketing.
- 5154e. Contracts for Withholding Union Dues From Employee's Wages Invalid Without Employee's Consent.
- 5154f. Secondary Strikes, Picketing and Boycotts Prohibited.
- 5154g. Strikes and Picketing Regulated and Prohibited; Elections; Injunction.

**Art. 5152. Right to Organize**

It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments.

[Acts 1925, S.B. 84.]

**Art. 5153. Other Rights and Privileges**

It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof.

[Acts 1925, S.B. 84.]

**Art. 5154. Organizations Excepted**

The preceding Article shall not be held to apply to any combination or combinations, or to any act by any member of such trades union or other organization or association, or any other person, or to an agreement between two or more persons, formed or taken for the pur-



pose of limiting the production, transportation, use or consumption of labor's products, or which creates a "Trust" or "Conspiracy in Restraint of Trade", as defined by the laws of this state. Nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service or other stipulations between employers and employees. Nothing herein shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies.

[Acts 1925, S.B. 84; Acts 1947, 50th Leg., p. 530, ch. 310, § 2.]

**Art. 5154a. Labor Unions, Regulation of**  
**Preamble of Public Policy**

Sec. 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

**Definitions**

Sec. 2. The words and terms hereafter defined, as used in this Act, shall have the meaning herein stated, except where the context of the Act shows that the same are used in some other sense or meaning;

(a) the words "Secretary of State" shall mean the Secretary of State of the State of Texas;

(b) "labor union" shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves, and improving their working conditions, wages, or employment relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions;

(c) "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union;

(d) "enforcement officer" means the Attorney General, District Attorney and the County Attorney;

(e) "working agreement" means a collective bargaining contract with an employer for union labor employees in any business or industry, and shall include any

renewal, extension, supplementation or change whatever in respect to any such agreement.

**Reports**

Sec. 3. It shall be the duty of every labor union to file with the Secretary of State, annually, and not later than the first day of February, except as hereafter provided, a report containing,

(a) the name and address of such union;

(b) the name and address of its local officers;

(c) the name and address of the State, national, and international organization or union, if any, with which it is affiliated;

(d) a complete financial statement of all fees, dues, fines, or assessments levied or received, together with an itemized list of all expenditures, with names of recipients and purposes therefor, covering the preceding twelve (12) months; and,

(e) a complete statement of all property owned by the labor union, including any moneys on hand or accredited to such union, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of the union acquainted with the facts therein stated.

Provided, however, that any union which closes its books at a date not convenient to file not later than the first of February may file such reports once each year as provided, and the Secretary of State shall set the time for such filing at a time convenient to the union. Each such labor union shall file with its first such report, duly attested copies of its constitution, or other organization papers and records, and shall thereafter report any changes or amendments to such constitution or organization papers and records within twenty (20) days after such changes are made.

Such reports shall be available only to the Secretary of State, the Commissioner of Labor Statistics, and the Attorney General but shall also be open to grand juries and judicial and quasi-judicial inquiries in legal proceedings.

**Officers**

Sec. 4. All officers, agents, organizers, and representatives of such labor union shall be elected by majority vote of the members present and participating; provided, however, that labor unions, if they so desire, may require more than a majority vote for election of any officer, agent, organizer or representative, and may take any such vote of the entire membership by mailed ballots. Such election shall be held at least once each year, and the determination taken by secret ballot, of which election the membership shall be given at least seven (7) days' notice by written or printed notice mailed to the member's last known address, or by posting notice of such election in a

place public to the membership, or by announcement at a regular stated meeting of the union, whichever is most convenient to the union. The result of such election when held shall be ascertained and declared by the president and the secretary at the time in the presence of the members or delegates participating.

Provided, the requirement for annual elections herein made, or the methods of holding same, shall not apply to any labor union that for four (4) years prior to the effective date of the law shall have held its elections for officers, delegates and the like representatives less frequently than annually but which have held such elections either every three (3) years or every four (4) years under their constitution, bylaws, or other organization rules, and which unions have during the last ten (10) years charged not more than Ten Dollars (\$10) initiation fee to members.

#### Aliens or Convicts as Officers

Sec. 4a. It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

#### Political Contributions Prohibited

Sec. 4b. It shall be unlawful for any labor union to make any financial contribution to any political party or to any persons running for political office as a part of the campaign expenses of such individual.

#### Organizers

Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating

- (a) his name in full;
- (b) his labor union affiliations, if any;
- (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him.

Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following:

- (1) the applicant's name;
  - (2) his union affiliation;
  - (3) a space for his personal signature;
  - (4) a designation, "labor organizer";
- and,
- (5) the signature of the Secretary of State, dated and attested by his seal of office.

Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

#### Working Agreements

Sec. 6. All labor unions are hereby required to forward to the Secretary of State a copy of all existing working agreements with employers under which that organization is operating, within twenty (20) days after the execution of such working agreements, but only if such agreements contain a clause, or as a part of such agreement, which provides that the dues or any other collections for the benefit of the labor union are deducted from the worker's check or salary by the employer. Such working agreements shall be available only to the Secretary of State, the Commissioner of Labor Statistics, and the Attorney General, but shall also be open to grand juries, judicial and quasi-judicial inquiries. This shall not in anywise be construed to vitiate the Statute of Frauds.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 26.01.

#### Fees, Dues, Fines and Assessments

Sec. 7. It shall be unlawful for any labor union, its officers, agent or any member to make any charge or exaction, or to receive any moneys for initiation fees, dues, fines, assessments, or other pecuniary exactions, which will create a fund in excess of the reasonable requirements of such union, in carrying out its lawful purpose or activities, if such fees, dues, fines, assessments, or other pecuniary exactions create, or will create, an undue hardship on the applicant for initiation to the union, or upon the union members. Nothing in this Section shall be deemed or construed to prevent the collection by a labor union of dues or assessments for purposes which are beneficial to the members of the union according to the established practice, and/or to maintain funds or make investments of funds for such beneficial purposes. Neither shall this Section be construed to prevent dues, collections or other assessments for old age benefits, death and burial benefits, hospitalization, unemployment, health and accident, retirement or other forms of mutual insurance, for legislative representation, grievance committee, or for gifts, floral offerings, or other charitable purposes, or any other legitimate purposes when the union engages in or decides to engage in such a field or practice; provided that the members contributing share or can reasonably expect to share in the benefits for which they are assessed; neither shall this Section be construed to prevent assessments, dues, or other collections, except initiation fees, to be placed in the funds or as a part of the funds of the union for the use by the union in paying its members while such members are on a strike; provided such funds shall remain under control of the labor union members. This Section shall be liberally construed, however, to prevent excessive initiation fees.

#### Advance Fees

Sec. 8. It shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents, to collect any fees, dues, or sum of money whatsoever, in re-

spect to membership in a labor union, or for the privilege to work or as a permit to work, from any person, without giving such person at that time a receipt therefor signed by such labor organizer, union official or officer, or member of the labor union, or their agent, reciting that such sum of money so received is to be delivered to the labor union, and be held intact until said person has been duly elected, and has become a bona fide voting member of said labor union. Provided that it shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents to collect any fee for the privilege to work or as a permit to work and no charge shall ever be made nor shall any fee ever be collected for the privilege to work in this State. Provided, however, this shall not prevent the collection of reasonable initiation fees as provided in this Act. Upon the payment in full by an applicant for membership in a labor union of any and all initiation fees or dues regularly assessed by such union, such labor union shall (a) elect such applicant to membership, or (b) shall forthwith return in full said money thus paid by the applicant. Upon such election, however, such advance fees thus paid may be applied by the labor union to the purposes and uses for which same were advanced. All unions, its members, officers, or agents, shall collect all fees in good faith, and no union shall elect a person to membership merely for the purpose of obtaining his initiation fee. Neither shall any labor union engage in the practice of collecting initiation fees from members and proceeding thereafter to discharge, suspend or drop such member, or cause his employer to discharge such employee, without reasonable and just cause. If any labor union shall engage in such practice, it shall be guilty of a violation of this Act, and shall be subject to the civil penalties herein prescribed. Nothing hereinabove stated shall be construed to prevent a closed shop contract or other type of bargaining agreement or to limit the bargaining power of a labor union.

#### Collecting Fees for Privilege to Work Forbidden

Sec. 8a. It shall be unlawful for any labor union, any labor organizer, any officer, any agent or representative or any member of any labor union to collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union; provided, however, this shall not prevent the collection of initiation fees as above stated.

#### Books of Accounts

Sec. 9. It shall be the duty of any and all labor unions in this State to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor union shall be entitled at all reasonable times to inspect the books, records and accounts of such labor

union, and any enforcement officer shall be entitled upon demand, subject to the approval of the Attorney General at all reasonable times, to inspect such books, records, and accounts of such labor union. Such books, records, and accounts shall also be open to grand juries and judicial and quasi judicial inquiries in legal proceedings.

#### Members' Rights

Sec. 10. It shall be unlawful for any labor union to refuse to give any person desiring membership therein a reasonable time, after obtaining the promise of employment, within which to decide whether or not he desires to become a member of such labor organization, as a condition to such person's employment by the employer. It shall also be unlawful for any labor union to expel any member thereof except for good cause, and upon a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on specific charges preferred. Any Court of competent jurisdiction upon his petition therefor, shall order reinstatement of any member of the labor organization who shall be expelled without good cause.

#### Members in Armed Forces

Sec. 10a. Any employee who is a member of any union, who, because of services with the armed forces of the United States, has been unable to pay any dues, assessments, or sums levied by any union, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any union to which he belonged.

#### Penalties

Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars (\$1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

#### Enforcement by Civil Procedure

Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts.

**Enforcement Officer**

Sec. 13. It is hereby made the duty of the Attorney General and the District Attorneys and County Attorneys of this State, within their respective jurisdictions, to prosecute any and all criminal proceedings and to institute and maintain any and all civil proceedings herein authorized for the enforcement of this Act.

**Liberal Construction Required**

Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment.

**Separability Clause with Respect to Constitutional Invalidity**

Sec. 15. If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid. [Acts 1943, 48th Leg., p. 180, ch. 104.]

**Art. 5154b. Liability of Labor Organizations for Damages**

Sec. 1. A labor organization whose members picket or strike against any person, firm or corporation shall be liable in damage for any loss resulting to such person, firm or corporation by reason of such picketing or strike in the event that such picketing or strike is held to be breach of contract by a Court of competent jurisdiction.

Sec. 2. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

The term "picketing" as used in this Act, shall include the stationing or posting of one person or of others for and in behalf of any organization in order to induce or attempting to induce, anyone not to enter the premises in question, or to apprise the public, by signs, banners, or by any other means, of the existence of a dispute, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or to attempt to persuade them to cease entering or of patronizing the premises being picketed.

Sec. 3. If any clause, sentence or paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be judged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the persons or circumstances involved.

[Acts 1947, 50th Leg., p. 228, ch. 132.]

**Art. 5154c. Public Employees, Collective Bargaining Contracts With Organizations Representing; Strikes; Loss of Civil Service and Other Rights**

Sec. 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

Sec. 5. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

Sec. 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved.

[Acts 1947, 50th Leg., p. 231, ch. 135.]

**Art. 5154c-1. The Fire and Police Employee Relations Act**

**Designation of Act**

Sec. 1. This Act shall be known as "The Fire and Police Employee Relations Act."

**Policy**

Sec. 2. (a) It is declared to be the policy of the State of Texas that cities, towns, and other political subdivisions within the state having police and/or fire departments shall provide the firefighters and policemen, in said departments, with compensation and other conditions of employment that are substantially the same as compensation and conditions prevailing in comparable private sector employment.

(b) (1) It is also the policy of the State of Texas that firefighters and policemen, like employees in the private sector, should have the right to organize for purposes of collective bargaining, for collective bargaining is deemed to be a fair and practical method for determining wages and other conditions of employment for the employees who comprise the paid fire and police departments of the cities, towns, and other political subdivisions within this state. A denial to such employees of the right to organize and bargain collectively would lead to strife and unrest, with consequent injury to the health, safety, and welfare of the public. The protection of the health, safety, and welfare of the public, however, demands that strikes, lockouts, work stoppages and slow-downs of firefighters and policemen be prohibited; therefore, it is the obligation of the state to make available reasonable alternatives to strikes by employees in these protective services.

(2) In view of the essential and emergency nature of the public service performed by firefighters and policemen, a reasonable alternative to such strikes is a system of arbitration conducted under adequate legislative standards. Another reasonable alternative, which should be provided in the event the parties fail to agree to arbitrate, is judicial enforcement of the requirements of this Act regarding the compensation and working conditions applicable to firefighters and policemen.

(3) With the right to strike prohibited, it is requisite to the high morale of firefighters and policemen, and to the efficient operation of the departments which they serve, that alternative procedures be expeditious, effective, and bind-

ing. To that end, the provisions of this Act should be liberally construed.

**Definitions**

Sec. 3. As used in this Act, the following terms have the following meanings:

(1) The term "firefighter" means each permanent paid employee in the fire department of any city, town, or other political subdivision within the state, with the sole exception of the chief of the department. Nothing herein shall apply to volunteer firefighters.

(2) The term "policeman" means each sworn certified full-time paid employee, whether male or female, who regularly serves in a professional law enforcement capacity in the police department of any city, town, or other political subdivision within the state, with the sole exception of the chief of the department.

(3) The term "public employer" means the proper official or officials within any city, town, or other political subdivision whose duty is to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of firefighters and/or policemen whether such person or persons be the mayor, city manager, town manager, town administrator, city council, director of personnel, personnel board, commissioners, or other officials, by whatever name designated, or by a combination of such persons.

(4) The term "association" means any organization of any kind, or any agency or employee representation committee or plan, in which firefighters and/or policemen participate and which exists for the purpose, in whole or in part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting firefighters and/or policemen.

(5) "Strike" means the failure, in concerted action with others, to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, or in any manner interfering with the operation of any municipality, for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

**Requirement for Prevailing Wages and Conditions**

Sec. 4. Cities, towns, and other political subdivisions within the state employing firefighters and/or policemen shall provide those protective service employees with compensation and other conditions of employment that are substantially the same as compensation and other conditions of employment which prevail

in comparable private sector employment; therefore, compensation and other conditions of employment for those employees shall be based on prevailing private sector wages and working conditions in the labor market area in other jobs, or portions of other jobs, which require the same or similar skills, ability, and training, and which may be performed under the same or similar conditions.

#### Right to Organize and Bargain Collectively

Sec. 5. (a) Upon the adoption of the provisions of this Act by any city, town, or political subdivision in this state to which this Act applies, as herein in this section provided, firefighters and/or policemen shall have the right to organize and bargain collectively with their public employer as to wages, hours, working conditions, and all other terms and conditions of employment.

(b) The provisions of this Act may be adopted by any city, town, or other political subdivision to which this Act applies by the following method:

Upon receiving a petition signed by the lesser of five percent or 20,000 of the qualified voters voting in the last preceding general election in such city, town, or political subdivision, the governing body of such city, town or political subdivision shall hold an election within 60 days after said petition has been filed with such governing body. If at said election, a majority of the votes cast shall favor the adoption of this Act, then such governing body shall place this Act into effect within 30 days after the beginning of the first fiscal year of said city or town after said election. The question which shall be submitted to the vote of the qualified electors shall be as follows:

FOR or AGAINST the following:

Adoption of the state law applicable to "firefighters and policemen" or "firefighters" or "policemen", (whichever shall be applicable), which establishes collective bargaining when a majority of the affected employees favor representation by an employees' association and which preserves the prohibition of strikes and lockouts and provides penalties therefor.

(c) In any city, town, or political subdivision in which the provisions of this Act have been in effect for a period of one year, if a petition signed by the lesser of five percent or 20,000 of the qualified voters voting in the last preceding general election in such city, town, or political subdivision shall be presented to the governing body thereof to call an election for the repeal of the adoption of the provisions of this Act, then and in that event, the governing body shall call an election of the qualified voters to determine if they desire to repeal such adoption. If at said election, a majority of the votes cast shall favor the repeal of the adoption of this Act, then the provisions hereof shall become null and void as to such city,

town, or political subdivision. The question which shall be submitted to the vote of the qualified electors shall read as follows:

FOR or AGAINST the following:

Repeal of the adoption of the state law applicable to "firefighters and policemen" or "firefighters" or "policemen", (whichever shall be applicable), which establishes collective bargaining when a majority of the affected employees favor representation by an employees' association and which preserves the prohibition of strikes and lockouts and provides penalties therefor.

(d) When any election has been held in any city, town, or political subdivision at which election the adoption or rejection of the adoption of this Act has been submitted as aforesaid, a like petition for another such election shall not be filed for at least one year subsequent to the election so held.

#### Recognition of Bargaining Agent

Sec. 6. (a) An association selected by a majority of the paid firefighters of a fire department in any city, town, or other political subdivision, excluding the chief of the department, shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the firefighters of that department, unless and until recognition of such association is withdrawn by a majority of those firefighters.

(b) An association selected by a majority of the sworn certified full-time paid policemen of a police department in any city, town, or other political subdivision, excluding the chief of the department, shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the policemen of that department, unless and until recognition of such association is withdrawn by a majority of those policemen.

(c) In the event of a question as to whether or not an association is the majority representative of the employees in a department, pursuant to this section, such question concerning representation shall be resolved by a fair election conducted according to procedures agreeable to the parties. If the parties are unable to agree on such procedures, either party may request the American Arbitration Association to conduct the election and to certify the results thereof. Certification of the results of an election held pursuant to this section shall resolve the question concerning representation. The public employer shall be responsible for the expenses of the election, provided however that if two or more associations seek recognition as the bargaining agent then said associations shall share the costs of such election equally.

(d) Although the fire and police departments within the same city, town, or other political subdivision shall constitute separate collective bargaining units under this Act, nothing contained herein shall prevent associations representing employees in both of these

departments within the same city, town, or other political subdivision from voluntarily joining together for purposes of collective bargaining with the public employer.

#### Obligation to Bargain in Good Faith

Sec. 7. (a) Whenever the firefighters and/or the policemen of a city, town, or other political subdivision of the state are represented by an association in accordance with Section 6 of this Act, the public employer and the association shall be obligated to bargain collectively.

(b) For purposes of this section, to bargain collectively is the performance of the mutual obligation of the public employer and the association to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(c) The association or the public employer may designate any person or persons to negotiate or bargain on its behalf; and the parties may utilize mediation, pursuant to Section 9 of this Act, to assist them in arriving at an agreement.

(d) Whenever wages, rates of pay, or any other matter requiring appropriation of money by any governing body are included as a matter for collective bargaining pursuant to this Act, it shall be the obligation of the association to serve written notice of request for such collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

(e) All deliberations pertaining to collective bargaining between an association and a public employer or any deliberation by a quorum of members of an association authorized to bargain collectively or by a member of a public employer authorized to bargain collectively shall be open to the public and in compliance with the Acts of the State of Texas.

#### Enforceability of Agreements

Sec. 8. Whenever a public employer and an association reach an agreement on compensation and/or other terms and conditions of employment for firefighters or policemen, pursuant to the provisions of this Act, the public employer shall be deemed to be in compliance with the requirements of Section 4 hereof as to such terms and conditions of employment for the duration of agreement. The agreement shall be enforceable and shall be binding upon the public employer, the association, and the firefighters or policemen covered therein.

#### Impasse Procedures and Voluntary Mediation

Sec. 9. (a) In any dispute between a public employer and its protective services employees represented by an association, pursuant to this

Act, where an impasse is reached in the collective bargaining process, or where the appropriate lawmaking body fails to approve a contract reached through collective bargaining, and as a result the public employer and the employees are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request appointment of an arbitration board; provided, however, a party shall not request arbitration more than once during any fiscal year.

(b) For purposes of this section, an impasse in the collective bargaining process shall be deemed to occur when the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within 60 days after initiation of the collective bargaining proceedings. The period, however, may be extended by written agreement for additional periods of time, provided each such extension of time is for a definite period not to exceed 15 days.

(c) Prior to invoking arbitration, the parties shall make every reasonable effort to settle their dispute through good-faith collective bargaining; such efforts shall include mediation, provided a mediator can be appointed by agreement of the parties or by an appropriate agency of the state. If a mediator is appointed, his function shall be to assist all parties to reach a voluntary agreement. He may hold separate or joint conferences as he deems expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the differences and issues between the parties. He shall make no public recommendation on any negotiation issue in connection with the performance of his service nor shall he make a public statement or report which evaluates the relative merits of the position of the parties. The mediator may, however, recommend or suggest to the parties any proposal or procedure which in his judgment might lead to settlement.

#### Arbitration

Sec. 10. (a) The request for arbitration referred to in Section 9 hereof shall be initiated within five days following the expiration of the 60-day pre-impasse period or within five days following an agreed extension of the period, as provided in Section 9. If both parties elect to settle their dispute by arbitration, such election shall be made within five days following the request for arbitration, and shall be in the form of a written agreement to arbitrate. The issues to be arbitrated shall be all matters which the parties have been unable to resolve through collective bargaining in accordance with the procedures of Sections 7 and 9 of this Act.

(b) Although the policy of this Act favors and encourages the parties to elect voluntary arbitration, nothing contained herein shall be deemed a requirement for compulsory arbitration.

## Arbitration Board

Sec. 11. If the parties elect arbitration, within five days following the execution of the agreement to arbitrate they shall select and name one arbitrator and shall immediately notify each other in writing of the name and address of the person so selected. The two arbitrators so selected and named shall, within 10 days from the execution of the agreement to arbitrate, attempt to agree upon a third (neutral) arbitrator. If on the expiration of the said 10-day period the two arbitrators have been unable to agree upon the selection of the third arbitrator, either party may request the American Arbitration Association to utilize its procedures for selection of the neutral arbitrator, and said association shall be authorized to effect the appointment of the neutral arbitrator according to fair and regular procedures. Unless both parties consent, the neutral arbitrator so selected will not be the same person selected as a mediator pursuant to Section 9 hereof. The third (neutral) arbitrator, whether selected as a result of agreement between the two arbitrators previously selected or selected pursuant to American Arbitration Association procedures, shall serve as chairman of the arbitration board.

## Hearings

Sec. 12. (a) The arbitration board shall, acting through its chairman, call a hearing to be held within 10 days after the date of the appointment of the chairman; and the board shall, acting through its chairman, give the other two arbitrators, the association, and the public employer at least seven days' notice in writing of the time and place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to any issue presented to them for determination.

(b) The hearing conducted by the arbitration board shall be concluded within 20 days of the time of commencement; within 10 days after the conclusion of the hearing the arbitration board shall make written findings, in accordance with Section 12 of this Act, and render a written award on the issues presented. A copy of the findings and award shall be mailed or otherwise delivered to the association and to the public employer.

(c) Time periods specified in this section may be extended for reasonable periods by written agreement of the parties. Time periods may also be extended, for good cause, by the arbitration board, provided the cumulative period of the extensions granted by the board shall not exceed 20 days.

## Scope of the Arbitrators' Authority, Effect of the Award, and Enforceability

Sec. 13. (a) It shall be the duty of the arbitration board to render an award in accordance with the requirements of Section 4 of this Act. Accordingly, hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training, and skills are factors, among others, which the arbitrators shall consider in settling disputes relating to wages, hours, and other terms and conditions of employment.

(b) When an arbitration award is rendered in accordance with these provisions, the public employer involved shall be deemed to be in compliance with the requirements of Section 4 hereof as to the terms and conditions provided by said award for the duration of the collective bargaining period for which the award is applicable.

(c) A majority decision of the arbitration board, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration board, in the state district court for the judicial district in which a majority of the affected employees reside.

(d) The commencement of a new fiscal year following the initiation of arbitration procedures under this Act, but prior to the rendition of the arbitration award or its enforcement, shall not render a dispute moot or otherwise impair the jurisdiction or authority of the arbitration board or its award. Increases in rate of compensation awarded by the arbitration board under this section may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since initiation of arbitration procedures under this Act, the foregoing limitation shall be inapplicable and such awarded increases may be retroactive to the commencement of such fiscal year, any other statute or charter provision to the contrary notwithstanding.

(e) The parties may amend or modify an arbitration award by agreement in writing at any time.

## Judicial Review of the Arbitration Award

Sec. 14. Awards of the arbitration board shall be reviewable by the state district court for the judicial district in which the municipality is located, but only on the following grounds:

- (1) that the arbitration panel was without or exceeded its jurisdiction;
- (2) that the order is unsupported by competent material, and substantial evidence on the whole record; or
- (3) that the order was procured by fraud, collusion, or other such unlawful means.

The pendency of a proceeding for review shall not automatically stay the order of the arbitration board.



Compensation of Arbitrators and Expenses

Sec. 15. The compensation, if any, of the arbitrator appointed for the firefighters and/or policemen shall be paid by the association representing the firefighters and/or policemen. The compensation of the arbitrator appointed for the public employer shall be paid by the public employer. The compensation of the neutral arbitrator, as well as all stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings, shall be paid jointly in even proportions by the association representing the firefighters and/or the policemen and the public employer. If either party in the arbitration requires a transcript of the arbitration proceedings that party shall be required to bear the cost of the transcript.

Judicial Enforcement When the Public Employer Declines to Arbitrate

Sec. 16. Should a public employer choose not to elect arbitration when arbitration has been requested by an association pursuant to Sections 9, 10, and 11 hereof, on the application of the association, the state district court of the judicial district in which a majority of the affected employees reside shall have full power, authority, and jurisdiction to enforce the requirements of Section 4 hereof as to any unsettled issue relating to compensation and/or other terms and conditions of employment for firefighters and/or policemen. The court costs of any such action, including costs for a master if one is appointed, shall be taxed against the public employer. In the event the court finds the public employer in violation of Section 4 hereof, it shall:

- (1) order the public employer to make the affected firefighters and/or policemen whole as to their past losses;
- (2) declare the compensation and/or other terms and conditions of employment required by Section 4 hereof for the period as to which the parties had been bargaining, but not to exceed a period of one year, and
- (3) award the employees' association reasonable attorney's fees.

Strikes and Lockouts

Sec. 17. (a) Strikes, lockouts, work stoppages, and slowdowns of firefighters and/or policemen shall be unlawful, and they are hereby prohibited.

(b) In the case of a lockout of firefighters or policemen by a municipality, or its designated representative or agent, or a department or agency head, the Court shall

(i) issue an order restraining and enjoining such violation, and/or

(ii) impose on any individual violator a fine of not more than \$2,000.

(c) Upon the finding by the district court in which the municipality is located that a fire or police service association has called, ordered,

aided, or abetted in a strike of firefighters or policemen, the Court shall impose upon such employee organization, for each day of such violation a fine fixed in an amount equal to  $\frac{1}{26}$  of the total amount of annual membership dues of such association or \$20,000, whichever is the lesser; provided, however, that where an amount equal to  $\frac{1}{26}$  of the total amount of annual membership dues of such employee organization is less than \$2,500, such fine shall be fixed in the amount of \$2,500. In addition, the Court shall order forfeiture of any membership dues checkoff for a specified period of time not to exceed 12 months. If, however, the association alleges, and the Court finds, that the appropriate municipality or its representatives engaged in such acts of extreme provocation as to detract substantially from the responsibility of the association for the strike, the Court may, in its discretion, reduce the amount of the fine imposed.

(d) If an association appeals a fine imposed pursuant to the preceding paragraph,

(i) the Court to which such an appeal is taken shall, on motion of any party thereto, grant a preference in the hearing thereof, and

(ii) such employee organization shall not be required to pay such fine until such appeal is finally determined.

(e) If a firefighter or policeman engages in a strike, or interferes with the municipality, or prevents the municipality from engaging in its duty, or commits, attempts or directs any employee of the municipality to stop or decline to work, or slowdown work, or causes any other person to fail or refuse to deliver to the municipality goods or services, or pickets for any of the above illegal acts, or conspires to perform any of the above acts, the wages or compensation in any form of such firefighter or policeman shall not increase in any manner or form, until after the expiration of one year from the date such firefighter or policeman resumes normal working duties, and said firefighter or policeman shall be on probation for two years with respect to civil service status, tenure of employment, or contract of employment, which that person may have theretofore been entitled.

Judicial Enforcement Generally

Sec. 18. The state district court of the judicial district in which the municipality is located, and any judge thereof, shall have full power, authority, and jurisdiction, on the application of either party aggrieved by an action or omission of the other party, when such action or omission pertains to the rights, duties, or obligations provided in this Act, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writ, order, or process, including but not limited to contempt orders, that are appropriate to carrying out and enforcing the provisions of this Act.

## Severability

Sec. 19. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

## Act Takes Precedence

Sec. 20. (a) This Act shall supersede all conflicting provisions in previous statutes concerning this subject matter; to the extent of any conflict the previous conflicting statutory provision is hereby repealed; and this Act shall preempt all contrary local ordinances, executive orders, legislation, rules, or regulations adopted by the state or by any of its political subdivisions or agents, such as, but not limited to, a personnel board, a civil service commission, or a home-rule municipality.

(b) Provisions of collective bargaining contracts made pursuant to this Act shall take precedence over state or local civil service provisions whenever the collective bargaining contract, by agreement of the parties, specifically so provides. Otherwise, the civil service provisions shall prevail. Civil service provisions, however, shall not be repealed or modified by arbitration or judicial action; although arbitrators and courts, where appropriate, may interpret and/or enforce civil service provisions.

(c) Nothing contained in this Act shall be construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' or policemen's salaries, pensions, or retirement plans, hours of work, conditions of work, or other emoluments; this Act shall be cumulative and in addition to the benefits provided by said statutes and ordinances.

(d) Nothing contained in this Act shall be deemed a limitation on the authority of a fire chief or police chief of a city under Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes), except to the extent the parties through collective bargaining shall agree to modify such authority. [Acts 1973, 63rd Leg., p. 151, ch. 81, eff. Aug. 27, 1973.]

## Art. 5154d. Picketing

Sec. 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing," as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises

being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket," as used in this Act, shall include any person stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Sec. 2. It shall be unlawful for any person, singly or in concert with others, by use of insulting, threatening or obscene language, to interfere with, hinder, obstruct, or intimidate, or seek to interfere with, hinder, obstruct, or intimidate, another in the exercise of his lawful right to work, or to enter upon the performance of any lawful vocation, or from freely entering or leaving any premises.

Sec. 3. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activities, where any part of such picketing is accompanied by slander, libel, or the public display or publication of oral or written misrepresentations.

Sec. 4. It shall be unlawful for any person, singly or in concert with others, to engage in picketing, the purpose of which, directly or indirectly, is to secure the disregard, breach or violation of a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employees for the purpose of collective bargaining, or certified as the bargaining unit under the provisions of the National Labor Relations Act.<sup>1</sup>

Sec. 4a. It shall be unlawful for any person, singly or in concert with others, to declare, publicize or advertise the continued existence of picketing, actual or constructive, at any point or directed against any premises after a court of competent jurisdiction has enjoined and restrained the continuance of such picketing at said point or premises.

Sec. 5. Any person guilty of violating any of the Sections of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five

Dollars (\$25) nor more than Five Hundred Dollars (\$500), or be imprisoned in jail not to exceed ninety (90) days, or both. Each separate act of violation shall constitute a separate offense.

Sec. 6. If any clause, sentence, paragraph or part of this Act or the application thereof, to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act and the application thereof, it being the expressed intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid.

[Acts 1947, 50th Leg., p. 239, ch. 138.]

1 29 U.S.C.A. § 151 et seq.

#### Art. 5154e. Contracts for Withholding Union Dues From Employee's Wages Invalid Without Employee's Consent

Any contract which permits, requires, prescribes or provides for the retention of any part of the compensation of an employee for the purpose of paying dues or assessments on his part to any labor union, without the written consent of the employee delivered to the employer authorizing the retention or the withholding of such sum shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of existing contracts and to any new agreement or contract executed after the effective date of this Act.

[Acts 1947, 50th Leg., p. 487, ch. 284, § 1.]

#### Art. 5154f. Secondary Strikes, Picketing and Boycotts Prohibited

Sec. 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Sec. 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or fomenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, a controversy between such employ-

er and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding Five Hundred (\$500.00) Dollars, or by confinement in the county jail not to exceed six months, or by both such fine and imprisonment.

Sec. 4. Any person who violates any of the provisions of this Act shall be liable to the person suffering the same for all damages resulting therefrom, and the person damaged is hereby given right of action and access to the courts to redress such wrong or damage, including injunctive relief; and any association or labor union, local, state, national or international, which represents or purports to represent any such person violating any of the provisions of this Act shall be jointly and severally liable with any such person for all such damages resulting thereby.

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute a suit in the District Court to enjoin any person, association of persons, labor union, firm or corporation, or any officer, agent, servant or employee of such person, association of persons, labor union, firm or corporation, from violating any provision of this Act.

Sec. 6. In any suit or cause of action arising under this Act, venue shall lie:

- (1) in the county where such violation is alleged to have occurred;
- (2) in the county of the residence of the defendant;
- (3) in the county of the residence of either defendant if there be two or more defendants.

Sec. 7. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 8. If any section, sentence, phrase or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions thereof; it being the intention of the Legislature to pass the constitutional sections, sentences, phrases and parts of this Act even though some one or more sections, sentences, phrases or parts shall be held to be invalid.

[Acts 1947, 50th Leg., p. 779, ch. 387.]

#### Art. 5154g. Strikes and Picketing Regulated and Prohibited; Elections; Injunction

Public Policy Declared; Right to Work Not To Be Denied or Abridged for Union Membership or Non-membership

Sec. 1. It is hereby declared to be the public policy of the State of Texas that the right of persons to work shall not be denied or

abridged on account of membership or non-membership in any labor union or labor organization and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.

Striking or Picketing to Coerce Employer to Bargain with Employee Groups Representing Minority of Employees

Sec. 2. It shall be a violation of the rights set forth in Section 1 for any person or persons, or associations of persons, or any labor union or labor organization, or the members or agents thereof, acting singly or in concert with others, to establish, call, maintain, participate in, aid or abet any strike or picketing, an object of which is to urge, compel, force or coerce any employer to recognize or bargain with, or any employee or group of employees to join or select as their representative, any labor union or labor organization which is not in fact the representative of a majority of the employees of an employer or, if the employer operates two or more separate and distinct places of business, is not in fact the representative of a majority of such employees at the place or places of business subjected to such strike or picketing.

Election by Employees to Determine Bargaining Agency; Authority of Judge to Order; Procedure; Employees Eligible to Vote

Sec. 3. In any proceeding or suit that may be instituted under the provisions of Section 2 hereof, the trial judge, prior to final hearing thereon, is hereby authorized to order an election, by the employees of the employer subjected to strike or picketing, for the purpose of determining whether a labor union or labor organization is in fact the representative of a majority of the employees of said employer, and any such election shall be held, within twenty (20) days after the institution of such proceeding or suit, by a disinterested master appointed by the trial judge, under rules and procedures prescribed by the trial judge, which shall provide that the employer and the said labor union or labor organization may each have one representative present at the voting place or places as an observer, such representatives to be approved by the trial judge, and the voting of such election shall be by secret ballot. The ballots used in all elections under this Act shall be on plain white paper through which printing or writing cannot be read, shall be uniform in size, and shall not be numbered nor have attached in any manner any form of stub nor shall the person using said ballot be required to sign the same. Employment lists will be checked and no employees shall be allowed to vote more than once. Each ballot shall be initialed by the judge before being presented to the voter. All employees of the employer at the time of the commencement of the strike or picketing complained of shall be eligible to vote in any such election except employees who have since quit or been discharged for cause, which shall not include the partici-

pation in the strike or picketing complained of, and have not been rehired or reinstated prior to the date of the election; provided, however, that permanent replacements of employees on strike shall be eligible to vote in any such election.

**Liability for Damages for Violations; Injunction**

Sec. 4. Any person, organization or association who violates any of the provisions of this Act shall be liable to the person suffering therefrom for all resulting damages, and the person subjected to strike or picketing in violation of this Act is given right of action to redress such wrong or damage, including injunctive relief, and the District Courts of this State shall grant injunctive relief when a violation of this Act is made to appear.

**Injunction Suits**

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute suit in the District Court to enjoin any person or persons, association of persons, labor union or labor organization from violating any provision of this Act.

**Application for Assignment of Judge to Hear Proceedings**

Sec. 6. Any party to any suit or cause of action arising under this Act may make, within two (2) days after notice of the institution of said cause, application to the Presiding Judge of the Administrative Judicial District within which the suit is filed who shall immediately assign a District Judge from within said Administrative Judicial District who shall then hear all proceedings in the cause.

[Acts 1955, 54th Leg., p. 1029, ch. 387.]

**CHAPTER THREE. PAYMENT OF WAGES**

**Article**

- 5155. Pay Days.
- 5156. If Not Paid on Pay Day.
- 5157. Penalty for Failure to Pay.
- 5158. Attorneys Fees.
- 5159. Duty of Commissioner.
- 5159a. Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be Maintained.
- 5159b. Coupons, Chips, Scrip, Store Orders, or Other Evidence of Indebtedness to Laborers to be Redeemable on Demand in Money.
- 5159c. Action on Assignment of Wages; Written Notice of Assignment.
- 5159d. Minimum Wage Act of 1970.

**Art. 5155. Pay Days**

Every person, each manufacturing, mercantile, mining, quarrying, railroad, street railway, canal, oil, steamboat, telegraph, telephone and express company, employing one (1) or more persons, and each and every water company not operated by a municipal corporation, and each and every wharf company, and every other corporation engaged in any business within this State, or any person, firm or corporation engaged in or upon any public work for the

State or for any county or any municipal corporation thereof, either as a contractor or a subcontractor, therewith, shall pay each of its employees the wages earned by him or her as often as semimonthly, and pay to a day not more than sixteen (16) days prior to the day of payment.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 730, ch. 217; Acts 1957, 55th Leg., p. 1344, ch. 455, § 1.]

**Art. 5156. If Not Paid on Pay Day**

An employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand. Any employee leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand.

[Acts 1925, S.B. 84.]

**Art. 5157. Penalty for Failure to Pay**

Every person, partnership or corporation, willfully failing or refusing to pay the wages of any employee at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty dollars for each and every such failure or refusal. Suits for penalties accruing under this law shall be brought in any court having jurisdiction of the amount in the county in which the employé should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction, or by the County or District Attorney for the county or district in which suit is brought.

[Acts 1925, S.B. 84.]

**Art. 5158. Attorneys Fees**

The attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein ten dollars of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the county or district attorneys under the General Fee Act.

[Acts 1925, S.B. 84.]

**Art. 5159. Duty of Commissioner**

The Commissioner of Labor Statistics shall inquire diligently for violations of this chapter and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof.

[Acts 1925, S.B. 84.]

**Art. 5159a. Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be Maintained**

Sec. 1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work, shall be paid to all labor-

ers, workmen and mechanics employed by or on behalf of the State of Texas, or by or on behalf of any county, city and county, city, town, district or other political subdivision of the State, engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen, and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works with the State, or any officer or public body thereof, or in the execution of any contract or contracts for public works, with any county, city and county, city, town, district or other political subdivision of this State, or any officer or public body thereof, shall be deemed to be employed upon public works.

Sec. 2. The public body awarding any contract for public work on behalf of the State, or on behalf of any county, city and county, city, town, district or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workman needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. The contractor shall forfeit as a penalty to the State, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded, Ten Dollars (\$10.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by him, or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and, when making payments to the contractor of monies becoming due under said contract, to withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation and the terms of this Act; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a full investigation by the awarding body. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the

awarding body on account of the said subcontractor's failure to comply with the terms of this Act, and if payment has already been made to him the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

Sec. 3. The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with the said public work, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents.

Sec. 4. Any construction or repair work done under contract, and paid for in whole or in part out of public funds, other than work done directly by any public utility company pursuant to order of the Railroad Commission or other public authority, whether or not done under public supervision or direction, or paid for wholly or in part out of public funds, shall be held to be "public works" within the meaning of this Act. The term "locality in which the work is performed" shall be held to mean the county, city and county, city, town, district or other political subdivision of this state in which the building, highway, road, excavation, or other structure, project development or improvement is situated in all cases in which the contract is awarded by the state, or any public body thereof, and shall be held to mean the limits of the county, city and county, city, town, district or other political subdivisions on whose behalf the contract is awarded in all other cases. The term "general prevailing rate of per diem wages" shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision in the matter shall be final. It is mandatory that the public body state such prevailing wage as a sum certain, in dollars and cents. Nothing in this Act, however, shall be construed to prohibit the payment to any laborer, workman or mechanic employed on any public work as aforesaid of more than the said general prevailing rate of wages.

Sec. 5. Any officer, agent or representative of the State, or any political subdivision, district or municipality thereof, who wilfully shall violate, or omit to comply with, any of the provisions of this Act, and any contractor or subcontractor, or agent or representative thereof, doing public work as aforesaid, who shall neglect to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, workman and mechanic employed by him in connection with the said public work, or who shall refuse to allow access to same at any reasonable hour to any person authorized to inspect same under this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding Five Hundred Dollars (\$500.00), or by imprisonment for not exceeding six (6)

months, or by both such fine and imprisonment, in the discretion of the Court.

Sec. 6. If any section, sentence, clause or part of this Act is for any reason held to be unconstitutional such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, sentence, clause or part thereof, irrespective of the fact that one or more sections, sentences, clauses or parts thereof be declared unconstitutional.

[Acts 1933, 43rd Leg., p. 91, ch. 45; Acts 1969, 61st Leg., p. 1354, ch. 410, § 1, eff. June 2, 1969.]

#### Art. 5159b. Coupons, Chips, Scrip, Store Orders, or Other Evidence of Indebtedness to Laborers to be Redeemable on Demand in Money

##### Redemption

Sec. 1. All persons, firms, partnerships, or corporations using coupons, chips, scrip, punchouts, store orders, or other evidence of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe, or bona fide holder in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, partnership, or corporation using same as aforesaid, at a regular payday, such redemption to be at the face value of said scrip, chips, punchouts, coupons, store order, or other evidence of indebtedness; provided further, said face value shall be in cash the same as its purchasing power in goods, wares, and merchandise at the commissary store or other repository of such persons, firms, partnerships, or corporations aforesaid.

##### Actions to Redeem; Penalty

Sec. 2. Any employe, laborer, or bona fide holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, chips, coupon, punchout, store order, or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, partnership, or corporation to redeem the same in good and lawful money of the United States the owner of any such evidence of indebtedness may maintain in his, her, or their own name an action before any Court of competent jurisdiction against such person, firm, partnership, or corporation, using same as aforesaid for the recovery of the value of such coupon, scrip, chips, punchout, store order, or other evidence of indebtedness, as defined in Section 1 of this Act. If the plaintiff shall recover judgment in such case, it shall include a penalty of twenty-five (25) per cent of the amount due and a reasonable fee for the plaintiff's attorney for his services in the suit, all of which, as well as to costs, shall be taxed against the defendant.

[Acts 1937, 45th Leg., p. 705, ch. 354.]

#### Art. 5159c. Action on Assignment of Wages; Written Notice of Assignment

Sec. 1. No action shall be brought against any employer upon any assignment by an em-

ployee of such employer to any person of any wages or salaries unearned at the time of such assignment unless such employer shall have written notice thereof immediately after the execution of such assignment.

Sec. 2. The provisions of this Act shall not apply to such assignments heretofore executed if action is brought within ninety (90) days following the effective date of this Act, nor shall this Act apply to pending litigation.

Sec. 3. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. Provided, however, that nothing in this Act shall in any manner affect or repeal any part of Acts, 1939, Forty-sixth Legislature, page 282, Chapter 13, as amended (codified as Vernon's Article 2883a).<sup>1</sup>

[Acts 1955, 54th Leg., p. 595, ch. 203.]

<sup>1</sup> Article 2883a was repealed by Acts 1969, 61st Leg., p. 3042, ch. 889, § 2, enacting the Texas Education Code. See, now, Education Code, § 2.07.

#### Art. 5159d. Minimum Wage Act of 1970

##### Purpose

Sec. 1. The Legislature hereby finds that a substantial number of the people of this state are working for wages that are not sufficient, in view of the cost of living, to enable them to maintain a standard of living necessary for the health, efficiency, and general well-being of themselves or their families. The Legislature also finds that this condition is a contributing cause of certain social disorders which have an adverse effect upon the economy of the state and the general welfare of its people, among which disorders are school dropouts, the disintegration of family units, and undue dependency upon public and private welfare programs. It is hereby declared to be the policy of this state to alleviate and as rapidly as practicable eliminate these conditions without undue curtailment of employment or earning power.

##### Short Title

Sec. 2. This Act may be cited as the Texas Minimum Wage Act of 1970.

##### Definitions

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

(a) "Person" means any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Employee" includes any individual employed by an employer.

(d) "Employ" includes to suffer or permit to work.

(e) "Tipped employe" means any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips.

(f) "Agriculture" includes farming in all its branches and among other things includes

(1) the cultivation and tillage of the soil;

(2) dairying;

(3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities including commodities defined as agricultural commodities in Section 15(g) of the federal Agricultural Marketing Act, as amended<sup>1</sup>;

(4) the raising of livestock, bees, fur-bearing animals, or poultry; and

(5) any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Piece rate worker" means any person who is employed as a hand harvest laborer in agriculture and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece rate basis in the region of employment.

(h) "Contract laborer" means any person or group of persons whose services are furnished to an employer by someone other than the laborer himself to perform agricultural labor.

(i) "Man-day" means any day during which an employee performs any agricultural labor for not less than four hours.

(j) "Commissioner" means the Commissioner of Agriculture.

(k) "Pay period" means the period of time which an employee works for which salary or wages are regularly paid under his employment agreement.

(l) "Range production of livestock" includes any livestock operation, regardless of size or type of location, where the land produces forage or feedstuffs either revegetated naturally or artificially and shall be considered to include the breeding, feeding, watering, containing, maintaining, and caring for livestock, and all other activities necessary or useful to the raising of livestock; provided that "range production of livestock" does not include production of livestock in feed lots.

<sup>1</sup> 12 U.S.C.A. § 1141j(g).

#### Exemptions

Sec. 4. (a) The provisions of this Act shall not apply to any person covered by provisions of the federal Fair Labor Standards Act of 1938, as amended.<sup>1</sup>

(b) Employers are exempt from the provisions of this Act with respect to employment of the following:

(1) any person who is a member of a religious order while performing any service for or at the direction of the order and any duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while performing services as such for a church, synagogue, or religious organization;

(2) any person who is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than 20 years of age and who is a student regularly enrolled in a high school, college, university, or vocational training program. Provided, that this exemption shall not apply to persons employed in agriculture who are paid on a piece rate basis;

(3) any person employed in a bona fide executive, administrative, or professional capacity;

(4) any person employed as an outside salesman or collector and who is paid on a commission basis;

(5) any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations;

(6) any person who performs domestic services in or about a private home, including any person performing the duties of baby sitting in or out of the home of the employer, and any person who lives in or about the private home and furnishes personal care for any resident of the home;

(7) any person who performs any services while imprisoned in the state penitentiary or confined in a local jail;

(8) any person engaged in the activities of an educational, charitable, religious, or nonprofit organization in which the employer-employee relationship does not in fact exist or in which the services are rendered to the organization gratuitously;

(9) any person employed by his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law, guardian, or person in loco parentis;

(10) any handicapped person who is not more than 21 years of age and who is a client of vocational rehabilitation and is participating in a cooperative school-work program;

(11) any employee employed by an establishment which is an amusement or recreational establishment, if it does not operate for more than seven months in any calendar year, or during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year;

(12) any person employed by organizations known as Boy Scouts of America,



Girl Scouts of America, or any local organization affiliated with these organizations;

(13) any person who is employed by any camp of a religious, educational, charitable, or nonprofit organization;

(14) any person employed in dairy farming.

(c) Except with respect to employment of persons in agriculture, employers who are not subject to liability for payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act, as amended,<sup>2</sup> are exempt from the provisions of this Act.

The Texas Employment Commission, during the months of January and June of each year, shall furnish to the Bureau of Labor Statistics a list of the names and addresses of all employers in this state who are then liable for the payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act as disclosed by the records of the Texas Employment Commission. Each list of employers shall be retained by the Bureau of Labor Statistics for a period of two years. Upon written request, the Commissioner of the Bureau of Labor Statistics shall furnish to any person applying therefor, a certificate stating whether or not the name and address of a specified employer appears on any list or lists of employers furnished by the Texas Employment Commission during the two years preceding the date of the request and, if so, the date of the list or lists upon which it appears. The certificates shall be admissible in evidence in any cause of action brought by an employee or employees under the provisions of Section 13 of this Act, and, in the absence of evidence to the contrary, it shall be presumed that the facts stated in such certificates are true and the certificate shall be conclusive as to the issue of whether or not the named employer is exempt from the provisions of this Act under Section 4(c). Except for the furnishing of certificates with respect to a specified employer as provided in this section, the lists of the names and addresses of employers provided to the Bureau of Labor Statistics by the Texas Employment Commission shall be confidential and shall not be removed from the office of the Bureau of Labor Statistics or released to any person nor shall the Commissioner of the Bureau of Labor Statistics permit any person to make a copy of any such list and remove it from his office. The Commissioner of the Bureau of Labor Statistics may require payment of a fee not to exceed \$5 for the issuance of a certificate as provided in this section and all fees collected for issuing certificates shall be deposited in the State Treasury to the credit of the General Revenue Fund.

<sup>1</sup> 29 U.S.C.A. § 201 et seq.

<sup>2</sup> Article 5221b-1 et seq.

#### Minimum Wage

Sec. 5. (a) Except as provided in Sections 6 and 7 of this Act, every employer shall pay to each of his employees (1) not less than \$1.25 an hour on and after February 1, 1970; and (2) not less than \$1.40 an hour on and after February 1, 1971.

(b) In determining the wage of a tipped employee, the amount paid the employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 percent of the applicable minimum wage rate.

(c) The cost to the employer of furnishing meals or lodging, or both, to an employee may be included in computing the wages paid to the employee if meals or lodging are customarily furnished by the employer to his employees, provided that the cost of the meals and of the lodging are separately stated and identified in the earnings statement furnished to the employee under the provisions of Section 11 of this Act.

(d) No employer who has an employee that lives on the premises of a business and is assigned certain working hours plus additional hours when the employee will be subject to call shall be required to pay the employee for more than the number of hours the employee actually worked or was on duty because of assigned working hours.

#### Minimum Wage for Agricultural Employees

Sec. 6. (a) Except for persons covered by Subsections (b) and (c) of this section and Section 7 of this Act, any person employed in agriculture on and after February 1, 1970, shall be entitled to receive for each hour that he works not less than 20 cents less than the federal hourly minimum wage for agriculture as provided in the Fair Labor Standards Act of 1938, as amended, but in no event shall the minimum hourly wage established in this Act for agriculture exceed the amount specified in Section 5 of this Act.

(b) On and after February 1, 1970, when a person employed in agriculture lives on the premises of the employer in quarters furnished by the employer, the employer, in addition to furnishing living quarters and other benefits, shall pay to the employee in cash a minimum weekly salary of not less than \$30 a week.

(c) When a person is employed as provided in Subsection (b) of this section and the employer, in addition to furnishing on-premises living quarters for the employee also furnishes on-premises living quarters for members of the employee's family, any member of the employee's family living in the quarters may be employed in agriculture by the employer without regard to the minimum wage and salary provisions of this Act.

(d) The provisions of this section take effect on February 1, 1970.

## Piece Rate Workers

Sec. 7. (a) On and after February 1, 1971, any person employed in agriculture as a piece rate worker to harvest a commodity for which a piece rate has been established by the commissioner under the provisions of this section shall be entitled to receive not less than the piece rate established by the commissioner for harvesting the particular commodity involved.

(b) The commissioner shall determine a piece rate for each agricultural commodity commercially produced in substantial quantity in this state in the manner provided in this section. The piece rate in each case shall be equivalent to the minimum hourly wage for other agricultural workers, as provided for in Section 6(a) of this Act, in that when payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity he shall receive an amount equal to the minimum hourly wage for agricultural workers. It is the intent and understanding of the Legislature that if a piece rate worker does not harvest the number of units of a particular commodity that would provide the minimum wage as established for a worker of average ability and diligence, none the less that worker need be paid for only those number of units of production harvested by him.

(c) The commissioner shall accumulate data regarding the actual productivity of hand harvesters of agricultural commodities in this state in sufficient quantity to serve as a reasonable basis for establishing a piece rate for each commodity. On the basis of this data the average hourly productivity of hand harvest laborers with respect to each agricultural commodity commercially produced in substantial quantity in this state shall be calculated in terms of units of each commodity or units of the weight or measure customarily used with respect to each commodity. The minimum wage for agriculture provided for in Section 6(a) of this Act shall then be divided by the average hourly production of hand harvesters of each commodity and in each case the result, rounded to the nearest cent, shall be the piece rate established by the commissioner for that commodity.

(d) When, in the judgment of the commissioner, insufficient data is available for determining the average hourly productivity of hand harvesters of a particular commodity, or when in the judgment of the commissioner a particular commodity is not commercially produced in this state in sufficient quantity or volume to warrant the determination of a piece rate, then no piece rate shall be established for the harvesting of the commodity and the provisions of Section 6(a) of this Act shall be applicable to employers employing hand harvest laborers to harvest any commodity for which piece rate has not been established. The decision of the commissioner not to establish a piece rate for a particular commodity at any given time shall not preclude the establishment of a piece rate

for the commodity at any subsequent time when, in the judgment of the commissioner, sufficient data are available and the volume of production of the commodity warrants the establishment of a piece rate.

(e) The commissioner shall retain all data used in determining any piece rate for the period of time that the piece rate based on the data is in effect, and all the data shall be available for public inspection.

(f) Before issuing an order establishing any piece rate or rates the commissioner, or such person as may be designated by the commissioner for such purpose, shall hold a public hearing at which the proposed rate or rates and the data upon which the rate or rates are based shall be presented. A reasonable opportunity shall be afforded to agricultural employers and employees, or their representatives, to be heard and to protest the establishment of any proposed rate, and following the hearing the commissioner may modify any proposed rate before finally establishing it. The judgment of the commissioner in establishing any piece rate shall be final and binding upon all parties subject to this Act unless set aside by judgment of a court of competent jurisdiction. In the event a piece rate for any commodity is set aside by final judgment of a court of competent jurisdiction, the minimum hourly wage provided in Section 6(a) of this Act shall apply to harvesting the commodity until a valid piece rate is established.

(g) The provisions of this section relating to the duties and authority of the commissioner shall become effective on the effective date of this Act and the commissioner shall proceed forthwith to collect data for the establishment of piece rates to become applicable on February 1, 1971. Initial piece rates shall be established and promulgated by the commissioner not later than December 31, 1970, and thereafter all orders of the commissioner establishing or modifying piece rates shall be issued at least 30 days in advance of the date when the rates become effective.

(h) After the establishment of any piece rate or rates the order establishing same shall be kept on file in the office of the commissioner in Austin, Texas, and shall be available for public inspection. The commissioner shall make copies available to anyone on request and may charge a reasonable amount to cover the cost of making and distributing the copies. A copy of each order establishing a piece rate or rates shall be furnished by the commissioner to the Bureau of Labor Statistics.

(i) At any time the data available to the commissioner indicates a substantial change in condition a new piece rate may be established for any commodity in the manner provided in this Act for the establishment of piece rates in the first instance. The commissioner shall review all piece rates at least once a year and determine whether any new rates are needed.

(j) The provisions of this section apply to contract labor as well as to any person directly

employed by any owner, operator, or manager of a farm.

(k) In case of emergency caused by flood, hurricane, or other natural calamity or other disaster or by any occurrence that may result in the excessive loss of agricultural products, piece rates may be suspended by order of the commissioner for not more than 30 days in any area defined in the order of suspension.

(l) The commissioner may make rules and regulations necessary for the proper administration of this Act, including procedures for giving notice of and conducting hearings.

#### Agricultural Exemption

Sec. 8. The provisions of Sections 5, 6 and 7 shall not apply to any agricultural employer who during any calendar quarter during the preceding calendar year did not use more than 300 man-days of agricultural labor, nor to any agricultural employer with respect to employees engaged in the production of livestock and in activities in support thereof.

#### Special Provisions for Certain Workers

Sec. 9. (a) In order to prevent curtailment of employment opportunities, any person whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury or who is over the age of 65 years may be employed at wages lower than the minimum wage applicable under this Act, but at not less than 60 percent of the minimum wage. Provided, that the provisions of the section shall not be applicable to persons employed in agriculture as piece rate workers.

(b) An employer employing a person mentioned in Subsection (a) of this section at a wage lower than the applicable minimum wage under this Act shall not be relieved of liability under Section 13 of this Act, unless, prior to the employment of the person or within 90 days after the effective date of this Act, the employer secures a medical certificate signed by a physician licensed to practice medicine by the Texas State Board of Medical Examiners, certifying that because of age, physical or mental deficiency, or injury the productive or earning capacity of the person seeking employment is materially impaired.

(c) The medical certificate shall be retained by the employer during the period of employment of the person and for two years after the employment is terminated. The statement of earnings given to the person by the employer, as required by Section 11 of this Act, shall include the words "medical certificate."

#### Sheltered Workshops

Sec. 10. Nonprofit charitable organizations which are engaged in evaluating, training, and employment services for handicapped clients and which comply with federal regulations covering these activities will be considered to have complied with this Act.

#### Employer's Statement

Sec. 11. (a) At the end of each pay period, the employer shall give each employee an earnings statement in writing covering that pay period. The earnings statement shall be signed by the employer or his agent and shall include:

- (1) the name of the employee;
- (2) the rate of pay;
- (3) the total amount of pay earned by the employee during the pay period;
- (4) any deductions made from the employee's pay;
- (5) the amount of pay after all deductions are made; and
- (6) the total number of hours worked by the employee if paid on an hourly basis, or the total amount of work done by the employee during the pay period in units of production if the employee is paid on the piece rate basis.

(b) If the employee is employed in agriculture under the provisions of Section 6(a), 6(b), or 6(c) of this Act, the employer's statement shall include a notation to that effect.

(c) The earnings statement may be in any form determined by the employer and it shall be sufficient if the information required by Subsection (a) of this section is stated on a check voucher or bank draft given to the employee for his wages.

#### Criminal Penalty

Sec. 12. Any employer, who, for the purpose of depriving an employee of any wages to which the employee is entitled, shall furnish to the employee a statement required under the provisions of Section 11 of this Act which the employer knows to be false, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not less than 5 nor more than 30 days or by both.

#### Civil Penalty

Sec. 13. (a) Any employer who violates the provisions of Section 5, 6, 7, or 9 of this Act is liable to the employee or employees affected in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

(b) An action to recover the liability may be maintained in any court of competent jurisdiction in the county where the cause of action accrued by one or more employees for himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any action brought under this section unless he gives his written consent and his written consent is filed in the court in which the action is brought.

(c) At the trial of any cause of action brought under this section, the plaintiff shall recover if the jury or the court finds from a preponderance of the evidence that

(1) the plaintiff or plaintiffs are or have been employed by the defendant at any time during the two years immediately preceding the institution of the suit;

(2) the defendant has failed, up until the time of the filing of the suit, to furnish plaintiff or plaintiffs a statement or statements of earnings as required by Section 11 of this Act;

(3) the original petition filed by or on behalf of plaintiff or plaintiffs is verified and contains a demand for the defendant to furnish the statement or statements of wages paid;

(4) the defendant persisted in failing or refusing to furnish the statement or statements; and

(5) that the defendant had failed to pay to plaintiff or plaintiffs the minimum wage as set forth in Section 5, 6, 7 or 9 of this Act.

(d) In addition to any judgment awarded to the plaintiff or plaintiffs, the court shall allow a reasonable attorney's fee and costs of the action to be paid by the defendant.

(e) An action to recover upon any liability imposed by this section must be commenced within two years after the unpaid wages are due and payable.

#### Collective Bargaining Not Impaired

Sec. 14. Nothing in this Act shall be considered to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages in excess of the applicable minimum under the provisions of this Act.

#### Dissemination of Information

Sec. 15. The Bureau of Labor Statistics shall disseminate information to the public regarding the provisions of this Act to the end that both employers and employees in this state will be fully aware of their respective rights and responsibilities, the exemptions specified, and the penalties and liabilities which may be incurred for violations of the provisions of this Act.

#### Severability

Sec. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1969, 61st Leg., p. 2348, ch. 796, eff. Sept. 1, 1969, § 6, eff. Feb. 1, 1970.]

#### Change of Name

*Acts 1973, 63rd Leg., p. 1185, ch. 434, classified as article 5151a, changed the name of the Bureau of Labor Statistics to the Department of Labor and Standards.*

## CHAPTER FOUR. CONTRACTORS' PERFORMANCE AND PAYMENT BONDS

### Article

5160. Bond for Labor and Material; Performance Bond.  
5160a. Notice and Bonding Requirements for Nonresident Construction Contractors.

5161 to 5164. Repealed.

### Art. 5160. Bond for Labor and Material; Performance Bond

#### Contractors' Bonds for Performance and Payment for Labor and Material

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of Two Thousand Dollars (\$2,000) with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

#### Rights of Person Furnishing Labor or Material; Notice Required

B. Every claimant who has furnished labor or material in the prosecution of the work pro-

vided for in such contract in which a Payment Bond is furnished as required hereinabove, and who has not been paid in full therefor, shall have the right, if his claim remains unpaid after the expiration of sixty (60) days after the filing of the claim as herein required, to sue the principal and the surety or sureties on the Payment Bond jointly or severally for the amount due on the balance thereof unpaid at the time of filing the claim or of the institution of the suit plus reasonable attorneys' fees; provided:

(a) Notices Required for Unpaid Bills, other than notices solely for Retainages as hereinafter described.

Such claimant shall have given within ninety (90) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material was delivered, in whole or in part, for which such claim is made, written notices of the claim by certified or registered mail, addressed to the prime contractor at his last known business address, or at his residence, and to the surety or sureties. Such notices shall be accompanied by a sworn statement of account stating in substance that the amount claimed is just and correct and that all just and lawful offsets, payments, and credits known to the affiant have been allowed. Such statement of account shall include therein the amount of any retainage or retainages applicable to the account that have not become due by virtue of terms of the contract between the claimant and the prime contractor or between the claimant and a subcontractor. When the claim is based on a written agreement, the claimant shall have the option to enclose, with the sworn statement of account, as such notice a true copy of such agreement and advising completion or value of partial completion of same.

(1) When no written contract or written agreement exists between the claimant and the prime contractor or between the claimant and a subcontractor, except as provided in subparagraph B(a)(2) hereof, such notices shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, and the approximate dates of performance and delivery, and describing the labor or materials or both in such a manner so as to reasonably identify the said labor or materials or both and amount due therefor. The claimant shall generally itemize his claim and shall accompany same with true copies of documents, invoices or orders sufficient to reasonably identify the labor performed or material delivered for which claim is being made. Such documents and copies thereof shall have thereon a reasonable identi-

fication or description of the job and destination of delivery.

(2) When the claim is for multiple items of labor or material or both to be paid for on a lump sum basis such notice shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, the amount of the contract and whether written or oral, the amount claimed and the approximate date or dates of performance or delivery or both and describing the labor or materials or both in such a manner as to reasonably identify the said labor or materials.

(3) When a claimant who is a subcontractor or materialman to the prime contractor or to a subcontractor has a written unit price agreement, completed or partially completed, such notices shall be sufficient if such claimant shall attach to his sworn statement of account a list of units and unit prices as fixed by said contract and a statement of such units completed and of such units partially completed.

(b) Additional Notices Required of Claimants Who Do Not Have a Direct Contractual Relationship With the Prime Contractor.

Excepting an individual mechanic or laborer who is a claimant for wages, no right of action shall be legally enforceable, nor shall any suit be maintained under any provision of this Act by a claimant not having a direct contractual relationship with any prime contractor for material furnished or labor performed under the provisions of this Act unless such claimant has complied with those of the following additional requirements which are applicable to the claim:

(1) If any agreements exist between the claimant and any subcontractors by which payments are not to be made in full therefor in the month next following each month in which the labor was performed or the materials were delivered or both, such claimant shall have given written notice by certified or registered mail addressed to the prime contractor at his last known business address, or at his residence, within thirty-six (36) days after the 10th day of the month next following the commencement of the delivery of materials or the performance of labor that there has been agreed upon between the claimant and such subcontractors such retention of funds. Such notice shall indicate generally the nature of such retainage.

(2) Such Claimant shall have given written notice by certified or registered mail as described in the preced-

ing subparagraph B(b)(1) to the prime contractor within thirty-six (36) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material delivered, in whole or in part, that payment therefor has not been received. A copy of the statement sent to the subcontractor shall suffice as such notice.

(3) If the basis of the claim is an undelivered specially fabricated item or items as described in paragraph C(b)(2), such claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b)(1) to the prime contractor within forty-five (45) days after the receipt and acceptance of an order for hereinafter described specially fabricated material that such an order has been received and accepted.

(c) Notices of Unpaid Retainages Required. Retainage Defined.

Retainage as referred to in this Act is defined as any amount representing any part of the contract payments which are not required to be paid to the claimant within the month next following the month in which the labor was done or material furnished or both.

When a contract between the prime contractor and such claimant, or between a subcontractor and such claimant provides for retainage, such claimant shall have given, on or before ninety (90) days after the final completion of the contract between the prime contractor and the awarding authority, written notices of the claim for such retainage by certified or registered mail to the prime contractor at his last known business address, or at his home address, and to the surety or sureties. Such notices shall consist of a statement showing the amount of the contract, the amount paid, if any, and the balance outstanding. No claim for such retainage contained in such notices shall be valid to an extent greater than the amount specified in the contract between the prime contractor or the subcontractor and the claimant to be retained, and in no event greater than ten per cent (10%) of such contract. However, such notices shall not be required if the amount claimed is part of a prior claim which has been made as heretofore described.

#### Claimant Defined

C. A claimant is defined as anyone having direct contractual relationship with the Prime Contractor, or with a subcontractor, to perform the work or a part of the work, or to furnish labor or materials or both as a part of the work as follows:

(a) Labor is to be construed to mean labor used in the direct prosecution of the work.

(b) Material is to be construed to mean any part or all of the following:

(1) Material incorporated in the work, or consumed in the direct prosecution of the work, or ordered and delivered for such incorporation or such consumption.

(2) Material specially fabricated on the order of the Prime Contractor or of a subcontractor for use as a component part of said public building, or other public work so as to be reasonably unsuitable for use elsewhere, even though such material has not been delivered or incorporated into the public building or public work, but in such event only to the extent of its reasonable costs, less its fair salvage value, and only to the extent that such specially fabricated material is in conformity and compliance with the plans, specifications, and contract documents for same.

(3) Rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment, used in the direct prosecution of the work at the project site, or reasonably required and delivered for such use.

(4) Power, water, fuel and lubricants, when such items have been consumed or ordered and delivered for consumption, in the direct prosecution of the work.

(c) A subcontractor is any person or persons, firm or corporation who has furnished labor or materials or both as defined above to fulfill an obligation to the prime contractor or to a subcontractor to perform and install all or part of the work required by the prime contract.

A subcontractor shall have a claim, but such claim, including previous payments however, shall not exceed that proportion of the subcontract price which the work done bears to the total of the work covered by the subcontract.

(d) When a claim is assigned to a third party then and in that event such third party shall stand in the same position as a claimant, provided the notices required in this Act are given.

#### Penalty for Fraudulent Claims

D. Any person who shall willfully file a false and fraudulent claim hereunder shall be subject to the penalties for false swearing.

#### Termination of Contract

E. In the event any contractor, who shall have furnished the bonds provided in this Statute, shall abandon performance of his contract or the awarding authority shall lawfully termi-

nate his right to proceed with performance thereof because of a default or defaults on his part, no further proceeds of the contract shall be payable to him unless and until all costs of completion of the work shall have been paid by him. Any balance remaining shall be payable to him or his surety as their interest may appear, as may be established by agreement or judgment of a court of competent jurisdiction.

**Copy of Bonds to be Furnished**

F. The contracting authority is authorized and directed to furnish to any person making application therefor who submits an affidavit that he has supplied labor, rented equipment, or materials for such work, or that he has entered into a contract for specially fabricated material, and payment therefor has not been made, or that he is being sued on any such bond, a certified copy of such payment bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting authority may fix to cover the actual cost of preparation thereof.

**Venue**

G. All suits instituted under the provisions of this Act shall be brought in a court of competent jurisdiction in the county in which the project or work, or any part thereof, is situated. No suit shall be instituted on the performance bond after the expiration of one (1) year after the date of final completion of such contract. No suit shall be instituted by a claimant on the payment bond after the expiration of one (1) year after the date suit may be brought thereon under the provisions of Section 1.B. hereof. The State of Texas shall not be liable for the payment of any cost or the expenses of any suit instituted by any party or parties on the payment bond.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 481, ch. 226, § 1; Acts 1959, 56th Leg., p. 155, ch. 93, § 1; Acts 1969, 61st Leg., p. 1390, ch. 422, § 1, eff. June 2, 1969.]

**Art. 5160a. Notice and Bonding Requirements for Nonresident Construction Contractors**

**Definition**

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

(1) "contractor" means a person, firm, association, corporation, or other private entity engaged in the construction business, including construction, alteration, repair, dismantling, or demolition of roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks, towers, airports, buildings, dams, levees, canals, railways, rail facilities, oil and gas wells, water wells, pipelines, refineries, industrial or processing plants, chemical plants, power plants, electric or telephone or any other type of energy or message transmission lines or equipment, but shall not include a privately

owned public utility or cooperative utility and/or affiliate thereof; and

(2) "nonresident contractor" means a contractor who does not maintain his principal place of business in this state.

**Notice of Contract**

Sec. 2. (a) Before actually commencing work or undertaking to perform any duties under a contract to be performed in this state, a nonresident contractor shall give written notice to the comptroller of public accounts, the Texas Employment Commission, the Industrial Accident Board, and the tax assessor and collector of each county in which work is to be performed under the contract.

(b) The written notices must be delivered by certified mail, return receipt requested.

(c) In the notice to each authority, the nonresident contractor shall state:

- (1) the approximate contract price;
- (2) the location where the contract will be performed;
- (3) the approximate date performance will begin under the contract;
- (4) the general nature of the work to be performed under the contract; and
- (5) his name and the address of his principal place of business.

**Bond Required**

Sec. 3. (a) Before actually commencing work or undertaking to perform any duties under the contract, a nonresident contractor shall file with the comptroller a surety bond with a corporate surety authorized to do business in this state, in the amount of 10 percent of the contract price, payable to the State of Texas, conditioned upon compliance with the tax laws, the unemployment compensation laws, and the workmen's compensation laws of this state.

(b) If the comptroller, after making an investigation at the request of a nonresident contractor, finds that he has, and will probably continue to have, property in this state sufficient to comply with the tax laws, workmen's compensation laws, and unemployment compensation laws of the state, or has a past record of compliance with these laws, the comptroller may issue a certificate of exemption from the bonding requirements of this Act. A contractor who holds this certificate is exempt from the bonding but not the notice requirements of this Act.

**Notice of Completion**

Sec. 4. Within one day after the completion of a contract, a nonresident contractor shall give written notice of the fact to all authorities required to be notified under Section 2 of this Act. The notice shall be given in the manner prescribed by Subsection (b), Section 2, of this Act.

**Actions**

Sec. 5. (a) An action against the contractor or surety on the bond required in Section 3

of this Act may be instituted in a district court in Travis County, or a district court in any county where the contract is being or was performed.

(b) No action may be instituted on the bond after one year has expired from the date on which the contractor mailed the notice required by Section 4 of this Act.

#### Penalty

Sec. 6. A contractor who fails to comply with any requirement of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000.

#### Reciprocity

Sec. 7. A contractor whose principal place of business is located in a state which does not require notice and bonding of nonresident contractors in the manner provided in this Act is exempt from the requirements of this Act.

[Acts 1967, 60th Leg., p. 1805, ch. 690, eff. Aug. 28, 1967.]

#### Arts. 5161 to 5164. Repealed by Acts 1959, 56th Leg., p. 155, ch. 93, § 3

The repealed sections, derived from Acts 1913, p. 185, related to suits on contractors' bonds. Subject matter is now covered by art. 5160.

Acts 1959, 56th Leg., ch. 93, p. 155, § 3, also provided that the rights, duties, and obligations of parties arising under or incidental to bonds executed prior to the effective date of this Act shall continue to be governed by the law heretofore applicable to bonds for public works.

### CHAPTER FIVE. HOURS OF LABOR

#### Article

- 5165. Eight Hours a Day's Work.
- 5165.1 Eight Hours a Day's Work.
- 5165.2 Violating Eight Hour Law.
- 5165.3 Penalty.
- 5165a. Weekly Working Hours of State Office Employees.
- 5166. Repealed.
- 5167. Hours of Patrolmen.
- 5167a. Hours of Peace Officers in Counties of Over 500,000 Population.

#### Art. 5165. Eight Hours a Day's Work

Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics.

[Acts 1925, S.B. 84.]

#### Art. 5165.1 Eight Hours a Day's Work

Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of

Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics.

[1925 P.C.]

#### Art. 5165.2 Violating Eight Hour Law

All contracts made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, person or association of persons for performance of any work, shall be deemed and considered as made upon the basis of eight (8) hours constituting a day's work. The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work. It shall be unlawful for any corporation, person or association of persons having a contract with the State or any political subdivision thereof, to require or permit any such laborers, workmen, or mechanics to work more than eight (8) hours per calendar day in doing such work, except in cases of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight (8) hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements or in cases where the total number of hours per week required or permitted of any such laborer, workman or mechanic, engaged on work financed in whole or in part by the Federal Government or any agency thereof, does not exceed the number of hours per week allowed by any regulation of the Federal Government or any agency thereof. In such emergencies the laborers, workmen, or mechanics so employed and working to exceed eight (8) hours per calendar day shall be paid on the basis of eight (8) hours constituting a day's work. Not less than the current rate of per hour wages for like work in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the State, or for any county, municipality or other legal or political subdivision of the State, county or municipality, and every contract hereafter made for the performance of work for the State, or for any county, municipality or other legal or political subdivision of the State, county or municipality, must comply with the requirements of this Chapter.

[1925 P.C.; Acts 1935, 44th Leg., p. 644, ch. 259, § 1.]

#### Art. 5165.3 Penalty

Any person, or any officer, agent or employé of any person, corporation or association of



persons, or any officer, agent or employé of the State, county, municipality, or any legal or political subdivision of the State, county or municipality, who shall fail or refuse to comply with any provision of this chapter or who shall violate any of its provisions shall be fined not less than fifty nor more than one thousand dollars, or be imprisoned in jail not to exceed six months or both. Each day of such violation shall be a separate offense.

[1925 P.C.]

**Art. 5165a. Weekly Working Hours of State Office Employees**

Sec. 1. All state employees who are employed in the offices of state departments or institutions or agencies, and who are paid on a full-time salary basis, shall work forty (40) hours a week. Provided, however, that the administrative heads of agencies whose functions are such that certain services must be maintained on a twenty-four (24) hours per day basis are authorized to require that essential employees engaged in performing such services be on duty for a longer work-week in necessary or emergency situations.

Sec. 2. Except as otherwise provided in Section 1 of this Act, and except on legal holidays authorized by law, the normal office hours of state departments, institutions and agencies shall be from 8:00 a. m. to 5:00 p. m., Mondays through Fridays, and these shall be the regular hours of work for all full-time employees; provided, however, that such normal working hours for employees of state departments and agencies in the Capitol Area in Austin may be staggered in such manner as biennial Appropriations Acts of the Legislature may stipulate or authorize in the interests of traffic regulation and public safety. Where an executive head deems it necessary or advisable, offices may also be kept open during other hours and on other days, and the time worked on such other days shall count toward the forty (40) hours per week which are required under Section 1 of this Act. It is further provided that exceptions to the minimum length of the work week may be made by the executive head of a state agency to take care of any emergency or public necessity that he may find to exist. None of the provisions of this Act shall apply to persons employed on an hourly basis.

[Acts 1953, 53rd Leg., p. 937, ch. 394; Acts 1963, 58th Leg., p. 184, ch. 104, § 1.]

**Art. 5166. Repealed by Acts 1935, 44th Leg., p. 644, ch. 259, § 2**

**Art. 5167. Hours of Patrolmen**

In all incorporated cities and towns however incorporated, having a population of fifty thousand inhabitants or more, according to the preceding Federal census, the patrolmen thereof, or those performing duties ordinarily performed by patrolmen, shall be required to serve on actual duty as patrolmen not longer than eight hours in every twenty-four hours of the

day; provided that in case of riot or other emergency, such patrolmen shall perform such duty and for such time as the directing authority of the departments shall require.

[Acts 1925, S.B. 84.]

**Art. 5167a. Hours of Peace Officers in Counties of Over 500,000 Population**

Except in cases of emergency, as determined by the sheriff or constable of such county, it shall be unlawful for any county having more than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census to require or permit any Peace Officer to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said county other than Peace Officers.

[Acts 1963, 58th Leg., p. 1190, ch. 474, § 1.]

**CHAPTER SIX. FEMALE EMPLOYEES**

**Article**

5168 to 5172. Repealed.

5172a. Hours of Work for Female Employees; Seats; Exceptions.

**Arts. 5168 to 5172. Repealed by Acts 1943, 48th Leg., p. 94, ch. 68, § 14**

**Art. 5172a. Hours of Work for Female Employees; Seats; Exceptions**

Factories, Mines, Mills, Etc.

Sec. 1. No female employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant, rooming house, theater, moving picture show, barber shop, beauty shop, roadside drink and/or food vending establishment, telegraph, telephone or other office, express or transportation company, State institution, or any other establishment, institution or other business enterprise, shall be required by her employer to work in excess of nine (9) hours in any twenty-four (24) hour day, nor more than fifty-four (54) hours in any one calendar week, without the consent of the affected employee.

Seats for Female Employees

Sec. 2. Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, beauty shop, telegraph or telephone company, or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the preceding Section, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting a notice in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all

such employees will be permitted to use such seats when not so engaged.

#### Exceptions

Sec. 3. The two (2) preceding Sections shall not apply to:

Female employees employed in any bona fide executive, administrative, professional, or outside sales capacity.

#### Extraordinary Emergencies; Overtime Pay

Sec. 4. In case of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked; but for such time not less than one and one-half times the regular rate at which such female is employed shall be paid to such female with her consent. Unless otherwise provided herein, any female employee who works more than forty (40) hours per week shall be entitled to receive from the employer pay at a rate not less than one and one-half times the regular rate for which such female is employed for all hours in excess of nine (9) hours per day, provided the employee actually works more than forty (40) hours per week.

#### Violations; Penalty

Sec. 5. Any employer, overseer, superintendent, foreman, or other agent of any such employer who shall permit any female to work in any place mentioned in Section 1 of this Act more than the number of hours provided therein in any one day of twenty-four (24) hours in any one calendar week, or who shall violate any of the other provisions or requirements of the Act in any respect, or who having furnished and provided suitable seats as provided for in Section 2, shall by intimidation, instruction, threats, or in any manner, prevent such female from sitting thereon, when not attending the duties of her position, shall be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars. Each day of such violation and each calendar week of such violation, and each employee permitted to work in said places more than the hours so specified in this Chapter, and every other violation of the provisions of this Chapter, shall be considered a separate offense.

#### Saving Clause

Sec. 6. That in the event any Section or part of a Section of the provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections, or parts of Sections of this Act; but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative Section, or part of Section or provision, had not been included. In the event any penalty, right or remedy created or given in any Section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty,

right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or inoperative part; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions.

[Acts 1943, 48th Leg., p. 94, ch. 68; Acts 1947, 50th Leg., p. 792, ch. 393, § 1; Acts 1953, 53rd Leg., p. 832, ch. 335, § 1; Acts 1961, 57th Leg., p. 978, ch. 425, § 1; Acts 1971, 62nd Leg., p. 1671, ch. 473, § 1, eff. Aug. 30, 1971.]

As enacted in 1943, this article consisted of 15 sections. Section 14 thereof provided:

"Chapter 56 of the General Laws of 1915, Regular Session of the 34th Legislature, Chapters 86 and 87 of General Laws of 1929, 41st Legislature, First Called Session; Chapter 114 of General Laws of 1933, Regular Session of the 43rd Legislature, Articles 1569, 1570, 1571, 1572, of Title 13, Chapter 3 of the Penal Code of Texas, Articles 5168, 5169, 5170, 5171 and 5172 of Chapter 6, Title 83 of the Revised Civil Statutes of Texas, are hereby specifically repealed, and all other laws and parts of laws in conflict herewith are hereby repealed."

The 1971 Act revised this article, according to its Title, " \* \* \* In order to eliminate any conflict between the provisions of this Act and the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 200(e) et seq., and to preserve the protections of this Act which the State has the legitimate interest in preserving, insofar as these protections are not inconsistent with the aforesaid federal statute \* \* \* \*".

## CHAPTER SEVEN. PROTECTION OF HEALTH AND SAFETY

### Article

- 5173. Temperature and Humidity.
- 5174. Odors and Dust.
- 5175. Cleaning and Wet Floors.
- 5176. Exits and Hand Rails.
- 5177. Toilets.
- 5178. Immoral Influences.
- 5178a. Immoral Influences; Penalty.
- 5179. Order to Correct Conditions.
- 5179a. Refusal to Correct Condition; Penalty.
- 5180. Suit to Set Order Aside.

### Art. 5173. Temperature and Humidity

In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every employee, and which in the judgment of the Commissioner of Labor Statistics or of his deputies and inspectors is sufficient for their health and welfare. [Acts 1925, S.B. 84.]

### Art. 5174. Odors and Dust

All factories, mills, workshops, mercantile establishments, laundries and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy or other

nuisance on the premises; all poisonous or noxious gases arising from any process, and all dust which is injurious to the health of persons employed, which is created in the process of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices.

[Acts 1925, S.B. 84.]

#### Art. 5175. Cleaning and Wet Floors

All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employes, and gratings or dry standing room shall be provided wherever practicable, at points wherever employes are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors.

[Acts 1925, S.B. 84.]

#### Art. 5176. Exits and Hand Rails

All doors used by employes as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light. The provisions of this article shall not apply to any mercantile establishment having seven female employees or less.

[Acts 1925, S.B. 84.]

#### Art. 5177. Toilets

Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one to every twenty-five male persons, and one to every twenty female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and ef-

fectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted.

In case there be more than one shift of not more than eight hours each of employees, the average number of persons in the establishment at any one time should be used in determining the number of toilets required.

[Acts 1925, S.B. 84.]

#### Art. 5178. Immoral Influences

It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees.

[Acts 1925, S.B. 84.]

#### Art. 5178a. Immoral Influences; Penalty

Any person in control of any factory, mill, workshop, laundry, mercantile establishment or other establishment where five or more persons are employed, all or part of whom are females, who shall permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employes, shall be fined<sup>1</sup> not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not exceeding sixty days, or both.

[1925 P.C.]

<sup>1</sup> So in enrolled bill. Probably should read "fined."

#### Art. 5179. Order to Correct Conditions

The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this chapter; and they are hereby empowered, upon finding any violation of this law by reason of unsanitary conditions such as endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this law, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this law, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this law, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this law in supposed compliance with any of the requirements of this law, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control

or management of such place or establishment, for the correction of any condition caused or permitted in or about such place or establishment in violation of any of the requirements of this law, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of this law, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided in the succeeding article. Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of such place or establishment, to comply with such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for in the succeeding article, the Commissioner of Labor Statistics or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this law or of such order, until such time as such condition, practice or method shall have been corrected.

[Acts 1925, S.B. 84.]

#### Art. 5179a. Refusal to Correct Condition; Penalty

Any person in control or management of any establishment included in the preceding article who shall fail or refuse to comply with any written order issued to such person by the Commissioner of Labor Statistics, or any of his deputies or inspectors, for the correction of any condition caused or permitted therein which endangers the health of the employes therein or which do not comply with the law governing such establishments, shall be punished as provided in the preceding article.<sup>1</sup>

[1925 P.C.]

<sup>1</sup> Article 5178a.

#### Art. 5180. Suit to Set Order Aside

The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this law, and directly affected by any finding or order provided for in the preceding article, may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in the preceding article, file a petition setting forth the particular cause or causes of objection to such order and findings

in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of a different nature, except such causes as are provided for in the statutes relating to the Railroad Commission, and shall be tried and determined as other civil causes in said court. If the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court. Said appeal shall at once be returnable to the proper appellate court at either of its terms, and shall have precedence in such appellate court over other causes of a different nature, except as above provided for. In any trial under this article the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them.

[Acts 1925, S.B. 84.]

### CHAPTER EIGHT. CHILD LABOR

#### Article

- 5181. Repealed.
- 5181a. Children Under Fifteen; Penalty.
- 5181b. Under Age of Seventeen; Penalty.
- 5181c. Messengers.
- 5181d. Limitation of Hours; Penalty.
- 5181e. Exemptions.
- 5181f. Inspectors to Have Access.
- 5181g. Exceptions.
- 5181h. Violations.

#### Art. 5181. Repealed by Acts 1963, 58th Leg., p. 676, ch. 249, § 4, eff. Aug. 23, 1963

This article, derived from Acts 1925, 39th Leg., ch. 42, p. 176, § 5, allowed the employment of children over the age of twelve under certain circumstances, and upon securing a permit. The subject matter is now covered by art. 5181e.

#### Art. 5181a. Children Under Fifteen; Penalty

Any person, or any agent or employee of any person, firm or corporation who shall hereafter employ any child under the age of fifteen years to labor in or about any factory, mill, workshop, laundry, or in messenger service in towns and cities of more than fifteen thousand population, according to the preceding Federal census, shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars, or be imprisoned in jail for not more than sixty days.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

#### Art. 5181b. Under Age of Seventeen; Penalty

Any person, or agent, or employee of any person, firm or corporation who shall hereafter employ any child under the age of seventeen years to labor in any mine, quarry or place where explosives are used, or who, having control or employment of such child, shall send or cause to be sent, or who shall permit any person, firm or corporation, their agents or employees to send any such child under the age of seventeen years to any disorderly house, bawdy house, assignation house, or place of amuse-

ment conducted for immoral purposes: the character or reputation of which could have been ascertained upon reasonable inquiry on the part of such person, firm or corporation having the control of such child, shall be fined not less than Fifty Dollars nor more than Five Hundred Dollars, or be imprisoned in jail not to exceed sixty days.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

#### Art. 5181c. Messengers

It shall be the duty of every person, firm, or corporation, their agents or employees, doing a messenger or delivery business, or whose employees may be required to deliver any message, package, merchandise or other thing, having in their employ or under their control, any child under the age of seventeen years, before sending any such child on such errand, to first ascertain if such child is being sent or is to be sent to any place prohibited in Section 2 of this Act.<sup>1</sup> Failure or refusal to comply with this Section shall subject any person, or the agents or employees of any person, firm or corporation, having the control of such child or children, to the penalties provided in Section 2 of this Act.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

<sup>1</sup> Article 5181b.

#### Art. 5181d. Limitation of Hours; Penalty

Any person, firm or corporation, their agents or employees, having in their employ or under their control any child under the age of fifteen years, who shall require or permit any such child to work or be on duty for more than eight hours in any one calendar day, or for more than forty-eight hours in any one week, or who shall cause or permit such child to work between the hours of ten P.M. and five A.M. shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars, or be imprisoned in jail not to exceed sixty days.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

#### Art. 5181e. Exemptions

Upon application being made to the County Judge of any county in which any child over the age of fourteen (14) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed or in needy circumstances, invalid father, or of other children younger than the child for whom the permit is sought, the said County Judge may upon the affidavit of such child or its parents or guardian, that the child for whom the permit is sought is over fourteen (14) years of age, that the said child has completed the seventh grade in a public school, or its equivalent, that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of such child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy cir-

cumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which affidavit shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm, or corporation employing such child shall post in a conspicuous place where such child is employed, the permit issued by the County Judge; provided that no permits shall be issued for a period longer than twelve (12) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exist, and no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child, the parent, guardian or other person in charge or control of such child shall appear before the County Judge in person with such child for whom a permit is sought before such permit shall be issued. Nothing in this Act shall prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in a factory, mill, workshop, or any other place where the employment of children is prohibited by law.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1; Acts 1963, 58th Leg., p. 676, ch. 249, § 1.]

#### Art. 5181f. Inspectors to Have Access

The Commissioner of Labor Statistics, or any of his deputies or inspectors shall have free access during working hours to all places where children or minors are employed, and any owner, manager, superintendent, foreman or other person in authority, who shall refuse to admit, or in any way hinder or deter the said Commissioners or any of his deputies or inspectors from entering or remaining in such place, or from collecting information with respect to the employment of children as provided in this Act, shall be fined not less than Twenty-five Dollars nor more than One Hundred Dollars.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

#### Art. 5181g. Exceptions

Provided that nothing in this Act shall be construed as prohibiting the employment by any person of nurses, maids, yard servants or others for private houses and families, regardless of their age. Nothing in this Act shall apply to the employment at farm labor of the members of the family of a farmer, rancher, or dairyman on their own premises, whether owned or leased.

[1925 P.C.; Acts 1929, 41st Leg., p. 391, ch. 180, § 1; Acts 1963, 58th Leg., p. 676, ch. 249, § 2.]

#### Art. 5181h. Violations

Any parent or guardian of any child, or any person who has custody of any child, who knowingly permits such child to accept or continue employment in violation of Articles 1573,

1574, 1575, 1576, or 1577 (Vernon's Penal Code of Texas)<sup>1</sup> shall be fined or imprisoned, or both, in such manner as would be any person, or agent, or employee of any person, firm, or corporation who violates the provisions of any of such Articles.

[Acts 1963, 58th Leg., p. 676, ch. 249, § 3.]

<sup>1</sup> See, now, articles 5181a to 5181e.

## CHAPTER NINE. PROTECTION OF WORKMEN ON BUILDINGS

### Article

5182. Protection of Workmen on Buildings.

5182-1. Protection of Workmen on Buildings.

### Art. 5182. Protection of Workmen on Buildings

1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repair, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two foot centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such buildings as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out.

[Acts 1925, S.B. 84.]

### Art. 5182-1. Protection of Workmen on Buildings

1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repairs, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two feet centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is to be taken off or on shall be protected by automatic safety gates.

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4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such building as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out.

Any owner or agent of the owner, or any general contractor or sub-contractor, of any building described in the first subdivision of this article who shall fail to comply with any provision of this article shall be fined not less than fifty nor more than two hundred dollars. Each day of such violation is a separate offense.

[1925 P.C.]

**CHAPTER NINE A. OCCUPATIONAL SAFETY**

**Art. 5182a. Occupational Safety**

**Findings and Policies**

Sec. 1. It is hereby declared the policy of the State of Texas to protect the health and welfare of its people, to reduce and, where reasonable, to eliminate the causes of loss of production, reduction of man-hours of work, temporary and permanent disability of working men and women, and increases in certain insurance rates by promoting the adoption, application, and implementation of safety measures in industry and enterprise, by protecting working men and women against unsafe and hazardous working conditions and by encouraging correction of any such working conditions that may exist in industry and enterprise.

**Definitions**

Sec. 2. When used in this Act,

(1) "board" means the Occupational Safety Board created herein;

(2) "engineer" means the State Safety Engineer;

(3) "director" means the Director of the Division of Occupational Safety of the State Department of Health;

(4) "division" means the Division of Occupational Safety of the State Department of Health;

(5) "employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foreman or any other person having control or custody of any employment, place of employment or any employee; except carriers regulated by the Interstate Commerce Commission;

(6) "employee" means a person who works for an employer for wages, compensation, or other things of value, but shall not include any person employed in the domestic services of another in a private residence;

(7) "safe" and "safety" as applied to employment or places of employment, mean such freedom to employees from occupational injury as the nature of the employment reasonably permits;

(8) "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of miti-

gating or preventing occupational injury; and

(9) "place of employment" means every place where, either temporarily or permanently, any trade, industry, or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, but not including domestic service performed in a private residence.

**Duties of Employers**

Sec. 3. (a) Every employer shall furnish and maintain employment and a place of employment which shall be reasonably safe and healthful for employees. Every employer shall install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, as are reasonably necessary to protect the life, health, and safety of such employees, and shall do every other thing reasonably necessary to render safe such employment and place of employment.

(b) Every employer shall comply with every rule lawfully made by the board in accordance with the provisions of this Act; provided, however, any employer or group of employers in the same or similar industry, trade, or business may from time to time be exempt by the board from application of any rule or rules in accordance with his safety classification as determined by the board pursuant to Section 7(a) of this Act.

(c) However, no rule or standard promulgated under this Act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

**Occupational Safety Board**

Sec. 4. (a) For the purpose of administering the provisions of this Act there is hereby created within the State Department of Health a Division of Occupational Safety to be administered by an Occupational Safety Board consisting of three members, one to be the Commissioner of Labor Statistics, one to be the Commissioner of Health, and the third to be the public member who shall also serve as chairman of the board. The public member shall be appointed by the governor to serve for a term of two years, or until his successor is appointed and qualified. Vacancies in the position of public member shall be filled for an unexpired term by appointment by the governor in the same manner as the original appointment. The terms on the board of the Commissioner of Labor Statistics and the Commissioner of Health shall be coextensive with their tenure as such Commissioners, respectively.

(b) The members of the board created hereby shall receive no salary but the public member shall be allowed the sum of \$25 for each day or part thereof actually spent in the dis-

charge of his official duties, including time spent in traveling to and from the place of meeting or other authorized business of the board, and all members of the board shall be reimbursed for their reasonable and necessary traveling and other expenses while in performance of official duty, to be evidenced by vouchers approved by the engineer. The engineer is hereby authorized and directed to provide such board with such technical, clerical, and other assistance as shall be necessary to permit said board to perform its duties as provided in this Act.

(c) After due notice of meetings, a majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Occupational Safety Board, Department of Health, State of Texas." Any order, rule or proceeding of said board when duly attested by any member of the board shall be admissible as evidence of the act of said board in any court of this state.

#### Safety Engineer

Sec. 5. (a) The board shall employ a State Safety Engineer who shall be the director of the Division of Occupational Safety, under the control of the board, and who shall have the following qualifications:

(1) he shall have a degree in engineering from an accredited college or university or shall be a registered professional engineer and, in addition, shall have been engaged in safety engineering with at least three years' experience; or

(2) he shall have a college degree other than that specified in (1) hereof and, in addition, shall have been engaged in safety engineering with at least five years' experience; or

(3) in lieu of a college degree as specified in (1) and (2) hereof, he shall have been engaged in safety engineering for a period of not less than 10 years.

(b) The engineer shall administer the operation of the division, under control of the board. He shall employ and supervise such personnel as may be necessary for the proper conduct of the operation of the division. He shall devote full time to his duties as engineer and may not accept additional employment from any other source.

(c) The engineer shall make annual reports to the board and to the Governor of the State of Texas at the close of each fiscal year. The reports shall contain the following information to be obtained from the records:

- (i) accident frequency rates,
- (ii) accident severity rates,
- (iii) time loss from industrial accidents,

(iv) location and cause of industrial accidents, and

(v) all of such information shall be reported by industrial and occupational classification.

(d) The engineer shall cause to be inspected any plant or facility when he has reason to believe that the plant or facility has not complied with the rules, standards and regulations established by the board. No plant or facility shall be subject to this paragraph when it is entitled to credit on its workmen's compensation insurance rate.

#### Confidential Information

Sec. 6. No information relating to secret processes or methods of manufacture or products shall be disclosed at any public hearing or otherwise, and all such information shall be kept strictly confidential by the engineer, the board, and all employees thereof. Wilful disclosure or conspiracy to disclose confidential information disclosed under this section constitutes an offense against the state. The engineer, the board, or any employee thereof, who, having knowledge of confidential information, wilfully discloses or conspires to disclose such information is guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed \$1,000 and forfeiture of his appointment.

#### Classification, Consultative and Educational Powers

Sec. 7. (a) For purposes of establishing a safety classification for employers, the board is authorized, empowered, and directed to secure medical and compensation costs data regularly compiled by the State Board of Insurance in carrying out its rate-making duties and functions with respect to the employers' liability and workmen's compensation insurance law, to obtain from the Commissioner of Labor Statistics such statistical details as are collected by him and to collect and compile information relating to employers' accident frequency rate, existence and implementation of private safety programs, man-hour losses due to injuries, and other facts reflecting accident experience and, based upon all such factors to separate employers into such classifications as the board deems appropriate in order to carry out the purposes of this Act.

(b) The board is authorized and empowered, through any member, the engineer or any agent or employee in the division authorized by it for such purpose to endeavor to eliminate any impediment to occupational or industrial safety called to its attention, and to otherwise effectuate the purposes of this Act, by means of conference, conciliation, and persuasion; in carrying out such endeavor it is authorized and empowered to advise and consult with any employer directly involved and with representatives of employers and employees and public officials.

(c) The board is empowered to issue or cause to be issued such publications and such



reports of study and research as in its judgment will tend to promote occupational and industrial safety and minimize or eliminate any impediment to safety called to its attention, and to otherwise effectuate the purposes and policies of this Act.

#### Rule-making Power

Sec. 8. (a) In addition to such other powers and duties as may be conferred upon it by law, the board shall have authority to make and to modify reasonable rules and standards not inconsistent with this Act for the prevention of accidents and occupational injuries in every employment or place of employment, and for the construction, repair, and maintenance of places of employment, as the board shall find, upon the basis of substantial evidence presented at a public hearing held in accordance with the provisions of Section 9, to be reasonably necessary for the protection of the safety of employees. In making such findings, the board may consider among other relevant factors:

(1) the cause of industrial accidents and occupational injuries and the extent to which they may result from the use of, or failure to use, particular equipment, devices, processes, plant layouts, and methods of inspection, maintenance and construction and from the existence of particular working conditions;

(2) the effectiveness of particular equipment, devices, processes, plant layouts, and methods of inspection, maintenance, and construction in preventing industrial and occupational injuries;

(3) the applicable code, if any, formulated and/or approved by the American Standards Association.

(b) It shall be the duty of the engineer to propose to the board such rules or amendments thereof as he may deem necessary to carry out the provisions of this Act. The board shall appoint a General Advisory Occupational Safety Committee which shall be composed of 10 representatives of employers, 10 representatives of employees, and the engineer who shall act as chairman.

(c) Such committee shall propose for appointment by the engineer, and for final approval of the board, the members of subcommittees, to whom shall be delegated the details of developing new rules and standards, deletions and amendments or changes in existing rules and standards. Such amendments, deletions, or changes shall be referred to the General Advisory Committee for final recommendation to the board for its consideration and official adoption or rejection. The members of such subcommittees shall be selected primarily for their general qualifications to cope expertly with the various subjects assigned to them, and, to the extent practicable, the same impartial balance of representation by employer members and employee members shall be preserved. Qualification to serve on subcommit-

tees shall not require membership on the General Advisory Occupational Safety Committee, but members of such safety committee shall also be assigned to serve on such subcommittees by the engineer. The public member of the board shall be available to the subcommittees, upon their request or the request of the engineer, to aid the subcommittees in formulating their programs, recommended rules, and reports. The services of all such subcommittee members shall be voluntary and without compensation except as provided for the public member of the board under Section 4(b).

(d) Every rule or standard promulgated under this Act shall have the force and effect of law and shall be enforced by the engineer through the Division of Occupational Safety of the Department of Health; provided, however, that notwithstanding any other provision of this Act, evidence that an alleged act or omission is violative of any rule or standard promulgated under this Act shall not be admissible in any civil proceeding wherein such evidence is offered to prove or tend to prove that such act or omission is negligent or grossly negligent.

#### Public Hearing on Proposed Rules

Sec. 9. Before any rule or standard is adopted, amended, changed or repealed by the board, there shall be a public hearing thereon, notice of which shall be published at least once, not less than 10 days preceding such hearing, in such newspaper or newspapers of general circulation as the board may prescribe.

#### Hearings of Reasonableness of Safety Regulations

Sec. 10. (a) Any employer or other person directly affected by any safety rule, standard or regulation, or by an amendment, modification, change or repeal thereof, may petition the engineer for a hearing on the reasonableness of such resulting rule, standard, or regulation.

(b) Such petition for hearing shall be by verified petition filed with the engineer, setting out specifically the regulation, standard, amendment, modification, change or repeal, upon which a hearing is desired, and the reasons why the same is unreasonable. All hearings shall be open to the public.

(c) Upon receipt of such petition, the engineer, after consultation with the board, may determine the same by confirming without hearing his previous determination. If the material issues presented by the petition have not been previously considered at a hearing, the engineer shall refer the matter to the board for hearing for consideration of the issues involved and for its recommendations. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the engineer may find directly interested in the issues involved in the petition.

(d) If the board shall find that the rule, standard, regulation, amendment, modification, change or repeal complained of is unreasonable, it shall, in accordance with the procedure set forth in the provisions of this Act, formu-

late and propose such substitute rule, standard or regulation as the board shall determine to be reasonable, and a hearing shall be directed and held upon such substitute rule as provided in Section 9 hereof.

#### Effective Date of Rules: Publication

Sec. 11. (a) Every rule, standard, or regulation and all amendments, substitutions, changes and repeals thereof shall, unless otherwise prescribed by the board, take effect 30 days after the first publication thereof and certified copies thereof shall be filed in the office of the Secretary of State.

(b) Every rule, standard, or regulation adopted and every amendment, change or repeal thereof shall be published in such manner as the board may determine and the board shall deliver a copy to every person making application therefor. The engineer shall include the text of each rule or amendment thereto in an appendix to the Biennial Report of the Department of Health next following the adoption or amendment of such rule.

#### Judicial Review

Sec. 12. (a) Any person aggrieved by a rule, standard, or regulation issued or changed by the board under this Act shall, within 10 days after issuance or change of said rule, commence an action in a court of competent jurisdiction in Travis County, Texas, and not elsewhere, against said board as defendant, to set aside or suspend such rule or other action on the ground that the same is unlawful, arbitrary or unreasonable, or for any other proper ground. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal as in other civil cases to the court having jurisdiction of said causes; and said action so appealed shall have precedence in said appellate court of all causes of different character therein pending. Provided further that no preliminary injunction shall be issued without notice to the opposite party and a hearing had thereon.

#### Enforcement and Penalties

Sec. 13. (a) The engineer shall administer and enforce the provisions of this Act through his powers and authority under the provisions of this Act, and under such powers as may be lawfully delegated to him by the board under this Act.

(b) Any person, firm, or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and shall upon conviction be fined in a sum no less than \$50 nor more than \$500.

(c) Whenever called to his attention, and upon investigation, the engineer shall have reasonable cause to believe that an employer has violated or is violating the provisions of this

Act, he shall at once give written notice of the facts thereof to the proper county or district attorney for institution of such proceedings as are appropriate under the provisions of this Act.

#### Accident Reports

Sec. 14. The board may require of employers and of any other source, including the Industrial Accident Board of the State of Texas, which it may determine to be appropriate such accident, personal injury, fatality, or such other accident statistical reports and information on forms prescribed by and covering periods of time designated by the board.

#### Cooperation with Other State Agencies

Sec. 15. (a) The board, the engineer, and the General Advisory Committee shall cooperate with, assist and secure the assistance of the State Board of Insurance, the Industrial Accident Board, and the Commissioner of Health and such other agencies as may be capable of providing assistance in the accumulation and compilation of industrial injury and occupational health statistics and other data and reports and these agencies shall cooperate with the board and the engineer in achieving the purposes of this section.

(b) Nothing in this Act shall be construed as conflicting in any manner with the provisions of Chapter 178, Acts of the 49th Legislature, 1945, and particularly with Section 19 thereof (Section 19, Article 4477-1, Vernon's Texas Civil Statutes); nor with the provisions of Chapter 68, Acts of the 48th Legislature, 1943, as amended (Article 5172a, Vernon's Texas Civil Statutes); nor with Articles 5173 through 5180 and Article 5182, Revised Civil Statutes of Texas, 1925; nor with Chapter 436, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 5221c, Vernon's Texas Civil Statutes); nor with Article 5144 through Article 5151, Revised Civil Statutes of Texas, 1925; but this Act shall be construed in harmony with same so that the provisions of this Act and of these previously existing articles shall complement each other insofar as specifically provided therein as if the same had been passed at one and the same time.

#### Labor Disputes

Sec. 16. It is not intended that this Act, or any part thereof or act thereunder shall be an issue or be involved in any labor dispute, or be used or asserted to advantage in collective bargaining by employers or employees, and their respective representatives. To implement this section it is therefore provided, anything to the contrary elsewhere herein notwithstanding, that no provision of this Act shall apply to a place of employment while the same is subjected to picketing, strike, slowdown or other work stoppage.

[Acts 1967, 60th Leg., p. 441, ch. 201, eff. May 11, 1967.]

## CHAPTER TEN. INDUSTRIAL COMMISSION

### Article

5183. Appointment of Members; Qualifications; Terms.  
 5184. Expenses.  
 5185. Officers.  
 5186. Rural Business Development Division.  
 5187. Rural Economic Development Fund.  
 5188. Hearing to be Public.  
 5189. Report to Legislature.  
 5190. Power of Commission.  
 5190½. Additional Duties of Commission.  
 5190.1 Development of Employment, Industrial and Health Resources Act.  
 5190.2 Rural Industrial Development Act.

### Art. 5183. Appointment of Members; Qualifications; Terms

There is hereby created an Industrial Commission, composed of twelve members, each of whom shall be from a different geographical area of the state, two of whom shall be employers of labor, two of whom shall be employees or laborers, three of whom shall be residents of rural areas, and five of whom shall be from the general public. For the purposes of this article, a person resides in a rural area if he resides in a county which has no city located on or within its boundaries with a population of 50,000 or more, according to the last preceding federal census, and he does not reside in an incorporated city or town which has a population of more than 10,000, according to the last preceding federal census. The members of this commission shall be appointed by the Governor with the advice and consent of the Senate, such appointments to be made biannually on or before February 15 of odd-numbered years. The term of office of each member shall be six years. The terms of four members shall expire every two years. Vacancies occurring in the commission shall be filled by appointment of the Governor for the unexpired term.

[Acts 1925, S.B. 84; Acts 1959, 56th Leg., p. 702, ch. 322, § 1; Acts 1973, 63rd Leg., p. 1180, ch. 432, § 1, eff. June 14, 1973.]

Section 2 of the 1973 amendatory act provided: "When this Act takes effect, the governor shall appoint three residents of rural areas to the Industrial Commission in order to bring its total membership to 12 members. Of the three persons appointed, one of them shall be appointed to a term which expires on February 15, 1975, one to a term which expires on February 15, 1977, and one to a term which expires on February 15, 1979. Terms of the incumbent members of the commission are not affected by this Act."

### Art. 5184. Expenses

The members of this commission shall serve without pay or salary. The actual expenses incurred during hearings had by or before the commission and railway fare and hotel bills incurred by them shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law, until such time as the Legislature may make appropriations to cover such items.

[Acts 1925, S.B. 84.]

### Art. 5185. Officers

The commission shall elect one of their members as chairman of the commission, to preside

at all hearings had under the provisions of this law, with power and authority usually exercised by chairmen in such capacity. The commission shall appoint an executive director who shall serve as executive head of the agency. He shall keep full and accurate minutes of all transactions and proceedings of the commission; he shall be the custodian of all files and records of the commission; and he shall perform such other duties as may be required by the commission. The executive director shall be the administrator of the Industrial Commission's activities.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 69, ch. 27, § 1, eff. March 26, 1969.]

### Art. 5186. Rural Business Development Division

The Rural Business Development Division is established as a division of the Texas Industrial Commission. Under the direction of a Deputy Director for Rural Business Development who shall serve under the direction and at the pleasure of the Executive Director of the Texas Industrial Commission, the Division shall prepare and administer a statewide rural business development program designed to revitalize the rural economies and create rural job opportunities through business and industrial development in rural areas of the state. The Division shall be responsible to the Texas Industrial Commission for the administration of the Texas Rural Industrial Development Act.<sup>1</sup> The Division is authorized to cooperate with the Federal Government and with any political or legal subdivision of the State in research designed to aid in rural business and industrial development and to accept any Federal funds available for this purpose. The Texas Rural Business Development Program shall include:

(a) Plans, methods, and programs for encouraging the location of new industries and the expansion of existing industries in rural areas;

(b) Plans, methods, and programs for advertising the specific advantages to industries to locate facilities in the rural areas of Texas;

(c) Administration of the Texas Rural Industrial Development Act.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1181, ch. 432, § 3, eff. June 14, 1973.]

<sup>1</sup> Article 5190.2.

### Art. 5187. Rural Economic Development Fund

The Rural Economic Development Fund is established in the State Treasury to be financed by revenue allocated to it by law and other funds made available to it. The Rural Economic Development Fund may only be used by the Rural Development Division of the Texas Industrial Commission in carrying out the provisions of this Act. The Legislature may appropriate additional funds to the Division for the purposes of this Act.

[Acts 1925, S.B. 84; Acts 1973, 63rd Leg., p. 1181, ch. 432, § 4, eff. June 14, 1973.]

**Art. 5188. Hearing to be Public**

All hearings had by this commission shall be open to the public; and the findings and recommendations of the commission shall be furnished to the news agencies and newspapers of the State, to be published by the several papers of this State as news items.

[Acts 1925, S.B. 84.]

**Art. 5189. Report to Legislature**

The commission shall also make full report to the Legislature, if in session, and if not in session, then to the succeeding session, setting forth the findings and recommendations, accompanied by a transcript of the testimony taken at the hearings provided for herein.

[Acts 1925, S.B. 84.]

**Art. 5190. Power of Commission**

The commission shall have power to summon witnesses, to issue subpoenas, to compel attendance of witnesses, to compel production of books and records by witnesses, to punish for contempt, to hold sessions and to take testimony in or out of the State of Texas, and to pay witnesses as paid in felony cases.

[Acts 1925, S.B. 84.]

**Art. 5190½. Additional Duties of Commission**

(a) Additional duties of the Commission in addition to its other duties, the State Industrial Commission is hereby authorized to plan, organize and operate a program for attracting and locating new industries in the State of Texas.

(b) The Industrial Commission may accept contributions from private sources, all of which may be deposited in a bank or banks to be used at the discretion of the Commission in compliance with the wishes of the donors. All moneys in the State Treasury at the time of enactment of this Act which have been donated to the Commission may be withdrawn from the State Treasury and deposited in like accord, so as to free these funds for use by the Commission in accord with the donor's desires, and such funds are hereby appropriated for such purposes.

[Acts 1957, 55th Leg., p. 782, ch. 319, § 1; Acts 1959, 56th Leg., p. 431, ch. 193, § 5.]

**Art. 5190.1 Development of Employment, Industrial and Health Resources Act****Citation of Act**

Sec. 1. This Act may be cited as the "Act for Development of Employment, Industrial and Health Resources of 1971."

**Definitions**

Sec. 2. When used in this Act, unless otherwise apparent from the context:

(a) "City" means any municipality of this State incorporated under the provisions of (i) any general or special law provided the municipality has the power to levy an ad valorem tax of not less than

\$1.50 on each \$100 valuation of taxable property therein, or (ii) the home rule amendment to the Constitution.

(b) "Commission" means the Texas Industrial Commission.

(c) "Cost" as applied to a project or medical project means and embraces the cost of acquisition, including the cost of the acquisition of all land, rights-of-way, property rights, easements and interests acquired for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, costs of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any such project or medical project, administrative expense and such other expense as may be necessary or incident to the acquisition thereof, the financing of such acquisition and the placing of the same in operation.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas;

(e) "District" means a conservation and reclamation district established under authority of Article XVI, Section 59 or Article III, Section 52 of the Constitution of Texas.

(f) "Governing body" means the board, council, commission or legislative body of the issuer.

(g) "Issuer" means a city, county or district.

(h) "Lessee" means a corporation established under the Texas Non-Profit Corporation Act<sup>1</sup> that incurs a contractual obligation with an issuer as the lessor.

(i) "Medical project" means the land, buildings, equipment, facilities and improvements (one or more) found by the governing body to be required for public health, research, and medical facilities, any one or all, within this State, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the governing body.

(j) "Project" means the land, buildings, equipment, facilities and improvements (one or more) found by the governing body to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the governing body.

(k) "Ultimate lessee" means the person, firm, corporation, or company which leases a project or medical project from a lessee.

<sup>1</sup> Article 1396-1.01 et seq.

Bonds Payable From Revenue

Sec. 3. Bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the State, the issuer or of any other political subdivision or agency of this State or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State, the issuer or any political subdivision or agency of the State shall be obligated to pay the same or the interest thereon except from revenues of the particular project or medical project for which they are issued and that neither the faith and credit nor the taxing power of the State, the issuer or any political subdivision or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The issuer shall not be authorized to incur financial obligations which cannot be paid from revenues realized from the lease of a project or medical projects.

Powers of Issuers

Sec. 4. In addition to any other powers which it may now have, each issuer shall have without any other authority the following powers:

(1) to acquire, whether by construction, purchase, devise, gift, or lease or any one or more of such methods, one or more medical projects or projects, located within this State, and within or partially within its limits, provided that as to a city, such project or medical project may be situated outside its territorial limits if within its extraterritorial jurisdiction as provided by the Municipal Annexation Act;<sup>1</sup>

(2) to lease to a lessee any or all of its projects and medical projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this Act;

(3) to issue revenue bonds for the purpose of defraying all or part of the cost of acquiring or improving any project or medical project, and to secure the payment of such bonds as provided in this Act;

(4) to sell and convey all or any part of any real or personal property acquired as provided by Subdivision (a) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the issuer. No issuer shall have the power to operate any project as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by the exercise of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold, leased or otherwise utilized under the provisions of this Act, provided the governing body determines (a) that such use will not interfere

with the purpose for which such land was originally acquired or is no longer needed for such purpose, and (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended.

<sup>1</sup> Article 970a.

Lease Agreements; Commission Approval; Rules and Regulations; Filing; Appeal

Sec. 5. No issuer shall institute proceedings to authorize bonds under the provisions of Section 6(a) or 6(c) until the Commission has given tentative approval to the suggested contents of the lease agreement, and if a lessee is permitted to sublease, the Commission has also tentatively approved the financial responsibility of the ultimate lessee.

The Commission shall prescribe rules and regulations setting forth minimum standards for lease agreements and guidelines with respect to financial responsibilities of the lessee and ultimate lessee, if any, but in no event shall the Commission give final approval to any agreement unless it affirmatively finds the lessee and ultimate lessee have the business experience, financial resources and responsibility to provide reasonable assurance that all bonds and interest thereon to be paid from or by reason of such agreement will be paid as the same become due.

Appeal from any adverse ruling or decision of the Commission under this section may be made by an issuer to the District Court of Travis County. The substantial evidence rule shall apply.

Rules, regulations and guidelines promulgated by the Commission, and amendments thereto, shall be effective only after they have been filed with the Secretary of State.

Issuance of Bonds; Resolution of Intent, Publication; Protest; Election, Procedures

Sec. 6. (a) Before issuing any bonds hereunder the governing body shall adopt a resolution declaring its intention to do so, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date upon which the governing body proposes to authorize the issuance of such bonds. Such resolution shall be published once a week for at least two consecutive weeks in at least one newspaper of general circulation in the territorial limits of the issuer. The first publication shall be made not less than 14 days prior to the tentative date fixed in such resolution for the authorization of the bonds. If 10 percent of the qualified electors of the issuer shall file a written protest against the issuance of such bonds on or before the tentative date specified for the authorization of such bonds, then an election on the question of the issuance of such bonds shall be called and held as herein provided.

If no such protest be filed, then such bonds may be issued without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, the governing body of such issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds.

(b) Where an election is called, notice thereof shall be published once a week for at least two consecutive weeks, in at least one newspaper of general circulation within the territorial limits of the issuer. The first publication of such notice shall be made not less than 14 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to general elections, except as modified by the provisions of this Act. The order calling the election shall specify the date, place or places of holding the election, the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the Election Code. Only qualified property tax-paying electors who own taxable property which has been duly rendered for taxation shall be permitted to vote at such election.

The form of ballot shall be in conformity with Sections 61, 62, and 63, Texas Election Code, as amended (Article 6.05, 6.06, 6.07, Vernon's Texas Election Code), so that ballots provide for voting for or against the proposition: "The issuance of revenue bonds for the (medical project or project)."

Within 10 days after such election is held, or as soon thereafter as possible, the governing body of the issuer shall convene and canvass the returns of the election, and in the event such election results are favorable (majority vote) to the proposition such governing body shall so find and declare and shall be (subject to the provisions of Section 5) authorized to proceed with the authorization of bonds.

(c) A series of bonds may be issued for each project or medical project and any of such projects may be combined in a single series of bonds if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each project or medical project shall be considered separately with respect to the provisions of Section 5, 6(a), 6(b) and 6(c).

(d) Bonds shall be issued and delivered within three years of the tentative approval of the Commission, or within three years of the final judgment in any litigation affecting the validity of the bonds or the provision made for their payment, whichever date is later. Nothing herein shall be construed as prohibiting the Commission from conditioning its approval of the project or medical project upon the completion of the financing thereof within a lesser period of time.

Form of Bonds; Use of Proceeds; Interim Receipts or Temporary Bonds; Approval and Registration

Sec. 7. Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of revenue bonds for the purpose of paying all or any part of the cost of acquiring, constructing, enlarging or improving a project or medical project, except revenue bonds for a medical project may not be authorized by a district. The principal of and the interest on such bonds shall be payable solely from the funds provided for such payment and from the revenues of the particular project for which such bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times, not exceeding forty years from their date, as may be determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be fixed by the issuer prior to the issuance of the bonds.

The issuer shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the State. Provision may be made for execution of the bonds and coupons (if any) under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j-1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form, or both, as the issuer may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. If the duty of such reconversion is imposed on the Trustee in a Trust Agreement the substituted coupon bonds need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer may sell bonds so the net interest cost (as defined in Chapter 3, Acts of the 61st Legislature, 1969, as amended, Article 717k-2, Vernon's Texas Civil Statutes) shall not exceed 10 percent per annum and such bonds shall be sold to the highest bidder for cash (not exchanged for property).

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or medical project for which issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the pro-

ceeds of the bonds of any issue shall exceed the cost of the project or medical project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the issuer may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable or definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued under the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Act.

Before any issuer may deliver any bonds authorized hereunder to the purchaser thereof, the proceedings authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and approval. If the bonds shall have been duly authorized in accordance with the Constitution and laws of the State and constitute valid and binding obligations of the Authority, according to their tenor and effect, and proper revenues have been pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable.

#### Refunding Bonds

Sec. 8. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project or medical project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the issuer, for the additional purpose of constructing improvements, extensions or enlargements to the project or medical project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

#### Trust Agreement as Security

Sec. 9. Any bonds issued under the provisions of this Act may be secured by a trust

agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State. Any such trust agreement may pledge or assign lease revenues to be received from a lessee or ultimate lessee.

The trust agreement may evidence a pledge of the lease income to be received for the use of any project or medical projects for the payment of principal of and interest on such bonds as the same shall become due and payable and may provide to create and maintain reserves for such purposes. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the issuer, or lessee in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the project or medical project in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the issuer. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project or medical project.

#### Default in Payment; Enforcement; Option to Purchase

Sec. 10. Each bond issued under the provisions of this Act shall contain substantially the following language: "No pecuniary obligation is or may be imposed upon the issuer of this bond in the event there is a failure to pay all or part of the principal or interest thereon, except the issuer is obligated to apply rental income it receives from the project (or medical project) to such purposes."

Any agreement between a lessee and ultimate lessee relating to any project shall be for the benefit of the issuer as shall any agreement between the issuer and the lessee. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and

collect rents and to apply the revenues from the project in accordance with such resolution, mortgage or instrument.

Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

An issuer may grant a lessee or ultimate lessee an option to purchase all or any part of a project or medical project when all bonds of the issuer delivered to provide such facilities have been paid or provision has been made for their final payment, provided during the time the bonds or interest thereon remains unpaid there is no failure to pay the lease rentals at the time and in the manner as the same become due, provided a payment shall be deemed paid when and as due if no event of default is declared and the payment is made within 15 calendar days of the date it was scheduled to become due. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

#### Removal of Business from Existing Facilities

Sec. 11. No issuer may acquire or construct any project or medical project for any individual, firm, partnership, or corporation, or make or permit any lease to any individual, firm, partnership, or corporation where the effect of such lease shall be to remove lessee's business from existing facilities within the State of Texas.

#### Authority of Governing Body; Conditions of Approval

Sec. 12. Except as limited by the provisions of this law or as limited by the rules, regulations and guidelines of the Commission, each governing body shall have full and complete authority with respect to bonds, lease agreements and the provisions thereof.

No bonds shall be approved by the Attorney General until the Commission has given final approval to the lease agreement, nor shall such bonds be approved if any authorizing proceedings or provisions for security and payment of lease payments are not in conformity with this law.

#### Advertising for Contracts; Performance Bonds; Leasing Restriction

Sec. 13. All contracts for construction or purchases involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Re-

vised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts let by the issuer.

Bonds shall not be issued to acquire existing facilities for the purpose of again leasing the same to the same industrial concern or one controlled by such industrial concern and it shall be the duty of the Commission to investigate such matters before giving its tentative approval of any project or medical project.

#### Bonds and Profits Not Taxable; Bonds and Coupons Deemed Security

Sec. 14. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds issued by it and their transfer and the issuance therefrom, including any profits made in the sale thereof, shall at all times be free from taxation by the State or any municipality or political subdivision thereof.

Bonds issued under the provisions of this Act, and coupons (if any) representing interest thereon, shall when delivered be deemed and construed (i) to be a "Security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),<sup>1</sup> and shall be exempt securities under the Texas Securities Act. A lease agreement under this Act shall not be a security within the meaning of the Texas Securities Act.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

#### Legal and Authorized Investments; Security for Deposit of Public Funds

Sec. 15. Bonds approved by the Attorney General shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for any sinking funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas, and shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

#### Relocation of Highway, etc. at Sole Expense of Political Subdivision

Sec. 16. In the event any city, county, navigation district or other political subdivision, in the exercise of the power of relocation, or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or



alteration of construction shall be accomplished at the sole expense of the city, county, navigation district or other political subdivision. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

#### Qualification of Electors

Sec. 17. The Legislature hereby recognizes there is some confusion as to the proper qualification of electors in the light of recent court decisions. It is the intention of this Act to provide a permitted procedure for an election to authorize the issuance of revenue bonds, but in each instance the authority shall be predicated upon the expression of the will of the majority of those who cast valid ballots at an election called for the purpose. Should the governing body calling an election determine that all qualified electors, including those who own taxable property which has been duly rendered for taxation, should be permitted to vote at an election (by reason of the aforesaid court decisions), nothing herein shall be construed as a limitation upon the power to call and hold an election, provided provision is made for the voting, tabulating, and counting of the ballots of the resident qualified property taxpaying electors who own taxable property which has been duly rendered for taxation separately from those who are qualified electors, and in any election so called a majority vote of the resident qualified property taxpaying voters who own taxable property which has been duly rendered for taxation and a majority vote of the qualified electors, including those who own taxable property which has been duly rendered for taxation, shall be required to sustain the proposition.

#### Purpose and Effectiveness of Act

Sec. 18. It is hereby found, determined and declared:

(a) that the present and prospective health, safety, right to gainful employment and general welfare of the people of this State requires as a public purpose the promotion and development of new and expanded industrial manufacturing, medical and research enterprises;

(b) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and experience difficulty in undertaking additional such projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans;

(c) that communities in this State are at a critical disadvantage in competing

with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives, therefore, the issuance of revenue bonds by political subdivisions of the State as hereinafter provided for the promotion of industrial development, employment, public health and research is hereby declared to be in the public interest and a public purpose.

This law shall be effective without the necessity of a constitutional amendment to the full extent permitted by present provisions of the Texas Constitution. With respect to the powers granted herein, any provision of this law which may be effective only as the result of a change in the Texas Constitution shall become effective upon the adoption of the amendment proposed by Senate Joint Resolution No. 33 in the 62nd Legislature, the Legislature recognizing such constitutional amendment may be required to enable districts to proceed under this law. In no event shall any appropriation be made by the Legislature to pay all or any part of the obligation of any issuer under the provisions of this Act, and any expenses incurred by the Commission shall be paid out of funds appropriated to that agency.

#### Construction of Act; Severability

Sec. 19. Nothing in this Act shall be construed to violate any provision of the federal or State constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the Legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1971, 62nd Leg., p. 2555, ch. 840, eff. June 9, 1971.]

### Art. 5190.2 Rural Industrial Development Act

#### Citation of Act

Sec. 1. This Act may be cited as the "Texas Rural Industrial Development Act."

#### Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

(a) "Commission" means the Texas Industrial Commission.

(b) "Cost" as applied to a project means and embraces the cost of acquisition, including the rights, easements and interests acquired for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during con-

struction and for one year after completion of construction, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any project, administrative expense and such other expense as may be necessary or incident to the acquisition thereof, the financing of such acquisition and the placing of the same in operation.

(c) "Federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(d) "Industrial Development Agency" means a corporation established under the Texas Non-Profit Corporation Act<sup>1</sup> to promote and encourage industrial development within the State or a designated area of the State whose articles of incorporation provide that upon dissolution or winding up of its corporate affairs any property remaining after payment of debts of the corporation shall be conveyed, transferred, or vest in a city or county or be conveyed to a nonprofit corporation established for similar purposes.

(e) "Project" means the land, buildings, equipment, facilities and improvements (one or more) found by the Commission to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the Commission. A project must be located in a rural area, and more than one project may be located in the same rural area.

(f) "Responsible buyer" shall mean any person, partnership, or corporation found by the Commission to be financially responsible to assume the obligation prescribed by an industrial development agency in connection with the acquisition and operation of a project.

(g) "Responsible tenant" shall mean any person, partnership, or corporation found by the Commission to be financially responsible to assume all rental and all other obligations prescribed by an industrial development agency in connection with the leasing and operation of a project.

(h) "Rural area" means an area which is predominately rural in character, being one which the Commission after public hearing defines and declares to be a rural area in that it (1) sustained out-migration of population between the then last two federal censuses or (2) an area that sus-

tained a gain in population less than the average for standard State statistical metropolitan areas between the then last two federal censuses, or (3) an area in which manufacturing employment is less than the average for standard State statistical metropolitan areas according to the then preceding federal census; provided, however, no area of the State shall be included in more than one rural area, nor shall any one rural area contain territory in more than four counties. Rural areas may be defined and redefined by the Commission from time to time, after public hearing.

<sup>1</sup> Article 1336-1.01 et seq.

**Loan to Agency from Commission;  
Amount, Interest, Etc.**

Sec. 3. When it has been determined by the Commission (upon application of an industrial development agency and hearing thereon) that the establishment of a particular project of such industrial development agency has accomplished or will accomplish the public purposes of this Act, the Commission may contract to loan such industrial development agency an amount not in excess of a percentage of the cost of such project, as established or to be established as hereinafter set forth, subject, however, to the following conditions:

The Commission may contract to loan the industrial development agency an amount not in excess of 40% of the cost of such project if it has determined that the industrial development agency holds funds or property in an amount or value equal to not less than 10% of the cost of the project, which funds or property are then available for and are pledged to be applied to the establishment of such project.

Prior to the making of any loan the Commission shall have determined that the industrial development agency has obtained from other independent and responsible financial sources a firm commitment for all other funds, over and above the loan of the Commission and such funds or property as the industrial development agency may hold necessary for payment of all of the cost of establishing the project, and that the sum of all these funds, together with the machinery and equipment to be provided by the responsible tenant or responsible buyer, is adequate for the completion and operation of the industrial development project.

Any such loan of the Commission shall be for such period of time and shall bear interest at such rate as shall be determined by the Commission and shall be secured by bond or note of the industrial development agency and by mortgages on the project for which such loan was made, such mortgage to be second and subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and

responsible sources and used in the financing of the project.

In those instances where a federal agency participates in the financing of a project through a loan or a grant such participation shall be considered an independent and responsible source to the extent of the obligation of the federal agency to so participate under a loan or grant or similar agreement, and in such instance the Commission may accept a bond or note of the industrial agency and a mortgage on the project inferior to all first and second lien obligations, provided (a) the participation of the federal agency exceeds the loan by the Commission and (b) the federal agency's participation is conditioned upon its participation being secured by a lien superior to that of the Commission.

Money loaned by the Commission to the industrial development agencies shall be withdrawn from the Industrial Development Fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the Commission.

All payments of interest on said loans and installments of principal shall be deposited by the Commission as received in the Industrial Development Fund.

#### Loan Application; Hearings and Examinations

Sec. 4. No loan shall be made by the Commission except upon application by an industrial development agency, (in such form as may be required by the Commission) which shall include the following:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing enterprise for which the project has been or is to be established.

(b) A legal description of all real estate necessary for the project.

(c) Such plans and other documents as may be required to show type, structure and general character of the project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the industrial development project.

(e) Cost or estimates of cost of establishing the project.

(f) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the project;

(g) A statement of cash funds previously applied, or then held by the industrial development agency which are available for and are to be applied to the establishment of the project;

(h) Evidence of the arrangement made by the industrial development agency for

the financing of all cost of the project over and above the participation of the industrial development agency;

(i) Information on the responsible tenant to which the industrial development agency has leased or will lease the project or of the responsible buyer to which the industrial development agency has sold or will sell the project.

(j) A copy of the lease or sales agreement entered into or to be entered into by and between the industrial development agency and its responsible tenant or responsible buyer.

The Commission shall hold such hearings and examinations as to each loan application received as shall be necessary to determine whether the public purposes of this Act will be accomplished by the granting of a loan.

#### Powers of Commission; Staff Services

Sec. 5. In addition to other powers conferred upon the Commission by the provisions hereof the Commission through its staff shall:

(a) cooperate with industrial development agencies in their efforts to promote the expansion of industrial, manufacturing and development activity in rural areas;

(b) determine, upon proper application of industrial development agencies, whether the declared public purpose of this Act has been accomplished or will be accomplished by the establishment by such industrial development agencies of an industrial development project in rural areas;

(c) conduct examinations and investigations and hear testimony and take proof, under oath or affirmation, at public hearings, on any matter material for its information and necessary to the determination and designation of rural areas and the establishment of industrial development projects therein;

(d) make, upon proper application of industrial development agencies, loans to such industrial development agencies of money held in the Industrial Development Fund for projects in rural areas and to provide for the repayment and redeposit of such allocation and loans in its manner hereinafter provided;

(e) accept grants from and enter into contracts with any federal agency in the accomplishment of the purposes of this Act;

(f) take title by foreclosure to any project where such acquisition is necessary to protect any loan previously made therefor by the Commission and to pay all costs arising out of such foreclosure and acquisition from moneys held in the Industrial Development Fund and sell, transfer and convey any such project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with

reasonable promptness, the Commission may, in order to minimize financial losses and sustain employment, lease such projects to a responsible tenant or tenants;

(g) purchase first mortgages and make payments on first mortgages on any industrial development project where such purchase or payment is necessary to protect any loan previously made therefor by the Commission and sell, transfer, convey and assign any such first mortgage. Moneys so used in the purchase of any first mortgages or any payments thereon, shall be withdrawn from the Industrial Development Fund, and any moneys derived from the sale of any first mortgages shall be deposited in the Industrial Development Fund.

The Texas Industrial Commission shall provide staff services for the program herein provided, including liaison between the Commission and industrial development agencies and related organizations, and between the Commission and other agencies of the State whose facilities and services may be useful to the Commission in its work. The Commission may employ counsel, engineering, financial or other consultants as required in the carrying out of its duties and responsibilities hereunder. The Commission may obtain such professional services in cooperation with other State agencies or may retain persons or firms that may or may not be employed full, part-time, or as consultants for other agencies.

The Commission shall have no power at any time to borrow money, incur pecuniary obligations, or in any manner to pledge the credit or taxing power of the State of Texas or any of its municipalities or political subdivisions.

**Default in Payment; Enforcement; Advertising for Contracts; Performance Bonds; Leasing Restriction; Benefit Demonstrated**

Sec. 6. When the Commission makes a loan to an industrial development agency, it shall be provided in the instruments evidencing such loan that in the event of default in the payment of the principal or of the interest on such obligation or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such mortgage or instrument.

In instances where the Commission makes a loan, all contracts for construction of a project involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts.

No loan shall be made to acquire existing facilities for the purpose of again leasing the same to the same industrial concern or one controlled by such industrial concern.

The Commission shall not approve any loan unless it finds that the benefit to the rural area in which the project is situated will exceed the financial commitment of the Commission and that the approval of the particular project will aid in the alleviation of unemployment within the State or assist in the industrial development of the State and that such project will be of benefit to the State and its taxpayers.

**Hearing, Notice; Rules and Regulations, Filing; Appeal**

Sec. 7. In those instances where the Commission is required to make a determination or ruling, the same shall only be made after a public hearing. Notice of such hearing shall be given to the Secretary of State, Austin, Texas, at least 12 hours before the hearing is scheduled to begin but any hearing may be recessed from time to time (without the giving of additional notice) as the regulations of the Commission may provide.

Rules, regulations and guidelines promulgated by the Commission, and amendments thereto, shall be effective only after they have been filed with the Secretary of State.

Appeal from any adverse ruling or decision of the Commission under this section may be made by an issuer to the District Court of Travis County. The substantial evidence rule shall apply.

**Purpose of Act**

Sec. 8. It is hereby found, determined and declared:

(a) that the present and prospective health, safety, right to gainful employment and general welfare of the people of this State requires as a public purpose the promotion and development of new and expanded industrial and manufacturing enterprises;

(b) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and experience difficulty in undertaking additional such projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable mortgage loans;

(c) that communities in this State are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, this Act provides for the promotion of industrial development and employment and is

hereby declared to be in the public interest and a public purpose.

**Appropriations; Special Revolving Fund**

Sec. 9. Funds for the implementation and administration of this Act shall be provided by the General Appropriations Bill.

A special account in the Treasury of the State of Texas to be known as the Rural Industrial Development Fund is hereby created and the amount so appropriated hereby and any subsequent appropriation made by the Legislature for such purpose, as well as such other deposits as principal and interest on loans are repaid shall be deposited in said fund. It is the intent of this Act that the Industrial Development Fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this Act. To the extent the constitution requires such funds be appropriated and reappropriated for the aforesaid purpose, such action is hereby taken and such funds are hereby appropriated and reappropriated and it shall be the duty of the Legislature to take the same action in the future to the extent required by the constitution.

**Construction of Act; Severability**

Sec. 10. Nothing in this Act shall be construed to violate any provision of the federal or State constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the Legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1971, 62nd Leg., p. 2570, ch. 843, eff. June 9, 1971.]

**CHAPTER TEN A. TEXAS RELIEF COMMISSION [REPEALED]**

Art. 5190a. Repealed by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 39

**CHAPTER ELEVEN. STEVEDORES**

**Article**

- 5191. "Contracting Stevedore."
- 5192. Bond.
- 5193. Suits on Bond.
- 5194. License.
- 5195. Bond and License.
- 5195a. Penalty for Violation of Act.

**Art. 5191. "Contracting Stevedore"**

A contracting stevedore, within the meaning of this chapter, is any person, firm or associa-

tion of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or having loaded or unloaded any vessel, ship or water craft.

[Acts 1925, S.B. 84.]

**Art. 5192. Bond**

Each contracting stevedore shall make bond in the sum of five thousand dollars, with two or more good and sufficient sureties, who are residents of this State, or with any surety company authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in office, as trustee for all persons who may become entitled to the benefits of this law; conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with each of said laborers in respect to the loading and unloading of said water craft, will be faithfully and truly performed. Such bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded.

[Acts 1925, S.B. 84.]

**Art. 5193. Suits on Bond**

Suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned. The same may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond are pending, and when so exhausted, said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first.

[Acts 1925, S.B. 84.]

**Art. 5194. License**

Said contracting stevedore shall, before beginning such business, file written application to such county clerk for a license to pursue the occupation of a contracting stevedore for the county mentioned. On approval of the bond and payment of an occupation tax of five dollars the clerk shall issue a license to pursue said occupation, the license fee to be paid into the general fund of the county.

[Acts 1925, S.B. 84.]

**Art. 5195. Bond and License**

Such bond shall be made and such license shall be obtained in each county in which said contracting stevedore pursues said occupation. Said contracting stevedore shall be required to execute a new bond and to obtain a new license at the expiration of every year from the issuance of the former license.

[Acts 1925, S.B. 84.]

**Art. 5195a. Penalty for Violation of Act**

Any contracting stevedore, as that term is defined by the laws of this State, who shall engage in business as such without first obtaining the license and executing the bond required by the statutes of this State, shall be fined not less than one hundred nor more than five hundred dollars for each day he shall pursue such occupation or business without thus qualifying, and any member of a firm or association or any manager of a corporation who comes within the meaning of a contracting stevedore who shall thus offend is amenable to prosecution. [1925 P.C.]

## CHAPTER TWELVE. RESTRICTIONS ON LABOR

**Article**

- 5196. Discrimination.
- 5196a. Discrimination.
- 5196b. Penalty.
- 5196c. "Blacklisting" Defined.
- 5196d. Blacklisting Prohibited.
- 5196e. Penalty.
- 5196f. Exceptions.
- 5196g. Servants or Employé Not To Be Coerced.
- 5197. Discrimination Prohibited, etc.
- 5198. Foreign Corporations to Forfeit Permit.
- 5199. Liability.
- 5200. Fees of Attorney.
- 5201. Prima Facie Evidence of Agency.
- 5201a. Prima Facie Proof of Agency.
- 5202. May Examine Witnesses.
- 5203. Sworn Statement.
- 5204. Failure of Witness to Appear.
- 5205. Immunity of Witness.
- 5205a. Witness Must Testify.
- 5206. Statement of Cause of Discharge.
- 5207. Detectives.
- 5207a. Right to Bargain Freely Not To Be Denied; Membership in Labor Union.

**Art. 5196. Discrimination**

Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employee, or any employee who may have voluntarily left said corporation's services, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employee or other persons to whom such former employee has applied for employment, the reason why such employee was discharged, and why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver shall, by any means, directly or indirectly, communicate to any other per-

son or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement thereof if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made; provided that if such information is furnished at the request of a person other than the employee, a copy of the information so furnished, shall be mailed to such employee at his last known address.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employee of such corporation or receiver, shall have discharged an employee and such employee demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employee thereof fails to furnish a true statement of the same to such discharged employee, within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation or receiver shall fail, within ten days after written demand for the same, to furnish to any employee voluntarily leaving the service of such corporation or receiver, a statement in writing that such employee did leave such service voluntarily, or where any corporation or receiver of the same, doing business within this state, shall fail to show in any statement under the provision of this title the number of years and months during which such employee was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail within ten days after written demand for the same to furnish to any such employee a true copy of the statement originally given to such employee for his use in case he shall have lost or is otherwise deprived of the use of the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing, or calculated to prevent, the employment of a person seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing,

a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employee, shall have failed to give such employee a true statement of the causes of his discharge, within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employee.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver, shall discriminate against any person seeking employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall give any information or communication in regard to a person seeking employment having participated in any strike, unless such person violated the law during his participation in such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of this article.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 509, ch. 245, § 1.]

#### Art. 5196a. Discrimination

The following shall constitute discrimination against persons seeking employment: Where any corporation, or receiver of same, doing business in this State, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike.

[1925 P.C.]

#### Art. 5196b. Penalty

Every person violating any provision of the preceding article shall be imprisoned in jail for not less than one month nor more than one year.

[1925 P.C.]

#### Art. 5196c. "Blacklisting" Defined

He is guilty of "blacklisting" who places, or causes to be placed, the name of any discharged employé, or any employé who has voluntarily left the service of any individual, firm, company or corporation on any book or list, or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employés from securing employment of any kind with any other person, firm, company or corporation, either in a public or private capacity.

[1925 P.C.]

#### Art. 5196d. Blacklisting Prohibited

No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic, or laborer discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employé, mechanic, or laborer discharged by such corporation, company, or individual, from engaging in or securing similar or other employment from any other corporation, company or individual.

[1925 P.C.]

#### Art. 5196e. Penalty

If any officer or agent of any corporation, company or individual, or other person shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic or laborer, discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employé, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence or otherwise, to prevent such discharged employé from procuring employment, as provided in the two preceding articles he shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both.

[1925 P.C.]

#### Art. 5196f. Exceptions

This law shall not be held to prohibit any corporation, company or individual from giving, on application from such discharged employé, or any corporation, company or individual who may desire to employ such discharged employé, a written truthful statement of the reason for such discharge. Said written cause of discharge, when so made by such person, agent, company or corporation, shall never be used as the cause for an action for libel either civil or criminal, against the person, agent, company or corporation so furnishing same.

[1925 P.C.]

#### Art. 5196g. Servants or Employés Not To Be Coerced

No person, corporation or firm, or any agent, manager or board of managers, or servants of any corporation or firm shall coerce or require any servant or employé to deal with or purchase any article of food, clothing or merchandise of any kind whatever from any person, association, corporation or company, or at any place or store whatever. No such person, or agent, manager, or board of managers, or servants shall exclude from work, or punish or blacklist any of said employés for failure to deal with any such person or any firm, company or corporation, or for failure to purchase any article of food, clothing or merchandise at any store or any place whatever. Any person

violating any provision of this article shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

**Art. 5197. Discrimination Prohibited, etc.**

Any and all discriminations against persons seeking employment as defined in this chapter are hereby prohibited and are declared to be illegal.

[Acts 1925, S.B. 84.]

**Art. 5198. Foreign Corporations to Forfeit Permit**

Any foreign corporation violating any provision of this chapter is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision, by injunction or other proceeding in the district court of Travis County, in the name of the State of Texas.

[Acts 1925, S.B. 84.]

**Art. 5199. Liability**

Each person, company or corporation, who shall in any manner violate any provision of this chapter shall, for each offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the State of Texas, in any county where the offense was committed, or where the offender resides, or in Travis County; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to sue for the recovery of the same.

[Acts 1925, S.B. 84.]

**Art. 5200. Fees of Attorney**

The fees of the prosecuting attorney for representing the State in proceedings under this chapter shall not be accounted for as fees of office.

[Acts 1925, S.B. 84.]

**Art. 5201. Prima Facie Evidence of Agency**

In prosecutions for the violation of any provision of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation.

[Acts 1925, S.B. 84.]

**Art. 5201a. Prima Facie Proof of Agency**

Evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation.

[1925 P.C.]

**Art. 5202. May Examine Witnesses**

Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice is an officer, knows of a violation of any provision of this chapter, the justice to whom such application is made shall have summoned and examined such witness in relation to such violations.

[Acts 1925, S.B. 84.]

**Art. 5203. Sworn Statement**

Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such statement shall be delivered to the attorney upon whose application the witness was summoned.

[Acts 1925, S.B. 84.]

**Art. 5204. Failure of Witness to Appear**

If the witness summoned as aforesaid fails to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all facts within his knowledge with reference to the matter inquired about.

[Acts 1925, S.B. 84.]

**Art. 5205. Immunity of Witness**

Any person so summoned and examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve.

[Acts 1925, S.B. 84.]

**Art. 5205a. Witness Must Testify**

No witness shall refuse to testify as to any violation of this chapter on the ground that his testimony may incriminate him, but any witness so examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve.

[1925 P.C.]

**Art. 5206. Statement of Cause of Discharge**

Any written statement of cause of discharge, if true, when made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same.

[Acts 1925, S.B. 84.]

**Art. 5207. Detectives**

Any person, corporation, or firm who shall employ any armed force of detectives, or other persons not residents of this State, in the State of Texas, shall be liable to pay to the



State as a penalty not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this State. Nothing herein shall be construed to deprive any person, firm or corporation of the right of self-defense, or defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense.

[Acts 1925, S.B. 84.]

**Art. 5207a. Right to Bargain Freely Not To Be Denied; Membership in Labor Union**

Sec. 1. The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

Sec. 2. No person shall be denied employment on account of membership or nonmembership in a labor union.

Sec. 3. Any contract which requires or prescribes that employees or applicants for employment in order to work for an employer shall or shall not be or remain members of a labor union, shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of any existing contract and to any new agreement or contract executed after the effective date of this Act.

Sec. 4. Definitions. By the term "labor union" as used in this Act shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions.

Sec. 5. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved.

[Acts 1947, 50th Leg., p. 107, ch. 74.]

**CHAPTER THIRTEEN. EMPLOYMENT AGENTS**

- Article  
 5208 to 5210. Repealed.  
 5210a. Expired.  
 5211 to 5221. Repealed.  
 5221a-1. Repealed.  
 5221a-2. State System of Public Employment Officers.

Article

- 5221a-3. Political Subdivisions May Contract With State Employment Service.  
 5221a-4. Repealed.  
 5221a-5. Labor Agency Law.  
 5221a-6. Private Employment Agency Law.

Arts. 5208 to 5210. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

Art. 5210a. Expired

Arts. 5211 to 5221. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

Art. 5221a-1. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

**Art. 5221a-2. State System of Public Employment Officers**

Acceptance of Federal Act

Sec. 1. The State of Texas accepts the provisions of the Wagner-Peyser Act approved June 6, 1933 (48 Stat. 113, U.S.Code Title 29, Section 49) "an act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act.

Bureau of Labor Statistics as State Agency

Sec. 2. The Bureau of Labor Statistics<sup>1</sup> is hereby designated and constituted the agency of the State of Texas for the purposes of such Act. Said Bureau, its officers and employees, are hereby given full power to cooperate with all authorities of the United States having powers or duties under such Act and to do and perform all things necessary to secure to the State of Texas the provisions of such Act in the promotion and maintenance of a system of public employment offices.

Division of State Employment Service

Sec. 3. There is hereby created within the Bureau of Labor Statistics a division to be known as the Texas State Employment Service, responsible for administering a system of public employment offices for the purpose of assisting employers to secure employees, and workers to secure employment. The Commissioner of Labor Statistics is authorized and directed to establish such offices in such parts of the State as he deems necessary and to prescribe rules and regulations not inconsistent with any of the provisions of this Act.

Commissioner of Labor Statistics to Appoint Officers and Employees

Sec. 4. The Commissioner of Labor Statistics, in accordance with the regulations prescribed by the Director of the United States Employment Service, shall appoint the officers and other employees of the Texas State Employment Service created under this Act.

## Federal Funds Payable to State Treasurer

Sec. 5. All Federal funds made available to this State under said Act of Congress shall be paid into the Treasury of this State, and said funds are hereby appropriated and made available to the Bureau of Labor Statistics to be expended as provided by said Act of Congress and this Act.

[Acts 1935, 44th Leg., p. 552, ch. 236.]

<sup>1</sup>Name changed to Texas Department of Labor and Standards; see art. 5151a.

### Art. 5221a-3. Political Subdivisions May Contract With State Employment Service

The Commissioners Court of any county of this State or the governing body of any other political subdivision of this State is authorized to enter into agreements with the agents of the Texas State Employment Service for the purpose of establishing or maintaining or assisting in the establishing or maintaining of a free public employment service within such county or political subdivision, upon such terms and conditions as may be agreed upon by the Commissioners Court or other governing body and the agent of the Texas State Employment Service, and may employ such means and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such free public employment service in such county or political subdivision. As a part of such agreement the Commissioners Court or governing body of any other political subdivision of this State may enter into agreements with the Texas State Employment Service or its agents and as a part of such agreement may provide for the payment of agreed sums of money for rent of premises, payment for services rendered, purchase of equipment, or other purposes as may be deemed advisable by said Commissioners Court or other governing body.

[Acts 1939, 46th Leg., p. 4613, § 1.]

### Art. 5221a-4. Repealed by Acts 1949, 51st Leg., p. 434, ch. 234, § 15

### Art. 5221a-5. Labor Agency Law

#### Definitions as Used in the Act

Sec. 1. (a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by a Labor Agent or Agency from or on behalf of any person seeking employment, or employers seeking employees, in payment for any service, either directly or indirectly.

(c) "Employer" means any person employing or seeking to employ any employee.

(d) "Employee" means any person performing or seeking to perform work or service of any kind for compensation.

(e) "Labor Agent" means any person in this State who, for a fee, offers or attempts to pro-

cure, or procures employment for employees, or without a fee offers or attempts to procure, or procures employment for common or agricultural workers; or any person who for a fee attempts to procure, or procures employees for an employer, or without a fee offers or attempts to procure common or agricultural workers for employers, or any person, regardless whether a fee is received or due, offers or attempts to supply or supplies the services of common or agricultural workers to any person.

(f) "Commissioner" shall mean the Commissioner of Bureau of Labor Statistics.

(g) "Deputy or Inspector" shall mean any person who is duly authorized by the Commissioner to act in that capacity.

#### Exceptions

Sec. 2. The provisions of this Act shall not apply to persons who charge a fee of not more than Two Dollars (\$2) for registration only for procuring employment for school teachers; provisions of this Act shall not apply to any employment agency established and operated by this State, the United States Government, or any municipal government of this State; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within this State, nor to any common carrier operating in this State who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided, that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly, is exacted of the worker, then said employer is deemed an employment or labor agent and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given; the provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency; nor to any veterans' organization or labor union; nor to any nurses' organizations operated not for profit, to be conducted by recognized professional registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public.

#### Application and Bond

Sec. 3. Application and Bond for a Labor Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Labor Agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Such

application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which said applicant resides for at least three (3) years prior thereto, to the effect that applicant or applicants are persons of good moral character.

Such application shall be examined by the Commissioner, if he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant for each county for which application is made, and shall deliver such license to the applicant upon the payment of a license fee of One Hundred and Fifty Dollars (\$150) for each county in which the labor agent intends to operate. Each person making application for a labor agency license, and before such license is issued, shall make and file with the Commissioner good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of Five Thousand Dollars (\$5,000), payable to the State of Texas, for each county in which the agent intends to operate; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this Act, and that the agent will not make any false representation or statement to any person soliciting any assistance from him for employees or employment. Each license issued by the Commissioner shall be good for a period of one (1) year from the date of issuance.

#### Fees

Sec. 3A. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three Dollars (\$3), which may be collected from the applicant only after employment has been obtained and accepted by the applicant.

#### Occupation Tax

Sec. 4. In addition to the license fee and bond required in Section 3 of this Act, every labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall pay an annual State occupation tax of Six Hundred Dollars (\$600), and in each county where said labor agent operates, an annual occupation tax on a population basis, according to the last preceding Federal Census as follows:

In counties under one hundred thousand (100,000) population, the sum of One Hundred Dollars (\$100);

In counties having a population from one hundred thousand (100,000) to two hundred thousand (200,000) inclusive, the sum of Two Hundred Dollars (\$200);

And in counties over two hundred thousand (200,000) population, the sum of Three Hundred Dollars (\$300).

This tax shall be paid to the Commissioner at the time such license or licenses are issued, and shall be forwarded by him to the proper

county tax collection agencies. Such tax shall be good for the same period of time and run concurrent with the labor agency license. No other license fee or tax, whether general or local than as herein provided, shall be assessed against or levied upon any labor agency licensed under this Act.

#### Cancellation of License

Sec. 5. The Commissioner shall have the authority, and it shall be his duty, to cancel the license of any employment agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license, or has violated any provision of this Act.

The Commissioner shall not cancel the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed cancellation, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against for the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10) days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner.

At the conclusion of the hearing the Commissioner shall enter his findings and judgment in writing and the same shall be recorded by him in a permanent record to be kept by

him, and a copy thereof furnished to the agent complained against. Any agent whose license shall be cancelled by the Commissioner, may, within thirty (30) days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against the Commissioner in the District Court of Travis County. If the agent whose license has been cancelled by the Commissioner shall, within ten (10) days after receiving information of such cancellation, give notice to the Commissioner in writing of his intention to file such suit, the action of the Commissioner in cancelling the said license shall be suspended for a period of thirty (30) days, but unless such suit shall be filed within said time, the action of the Commissioner shall be final. If suit shall be filed against the Commissioner to reinstate said license within said time, the action of the Commissioner shall remain suspended until the validity of the license in question shall be adjusted by the Court in said suit. In such suits the burden shall be upon the agent to show good cause for reinstatement of his license.

#### Out-of-State Agencies

Sec. 6. No foreign labor agent, labor bureau or labor agency or other person or corporation resident of or domiciled in any other State or territory of the United States shall enter this State and attempt to hire, entice, or solicit or take from this State any common or agricultural workers, singly or in groups, for any purpose without first applying to the Commissioner of the Bureau of Labor Statistics for a license as an employment or labor agent as provided by this Act.

#### Reports to Commissioner

Sec. 7. Any labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall make monthly reports to the Commissioner on the first day of each and every month covering the preceding month, correctly showing the name and address of every representative, subagent, contractor, solicitor, recruiter engaged in any part of the work of that agency connected with the hiring, enticing, or soliciting of common or agricultural workers in this State to be employed beyond the limits of this State, and correctly showing:

- (a) The name, age, sex, race, and address of each person solicited to be employed beyond the limits of this State.
- (b) The name and address of the employer of every such person.
- (c) The kind of work every such person is employed to do.
- (d) The place where every such person is to be employed.
- (e) The term of employment of every such person.
- (f) The wages to be paid to every such person for his work, and
- (g) Whether or not transportation is to be furnished, arranged for, or paid for any

such common laborer or agricultural worker either leaving or returning to this State.

The said Commissioner shall have the authority and it shall be his duty to cancel the license of every agent who fails to make and file such monthly reports on or before the tenth day of each month, respectively, for the preceding month in accordance with the cancellation procedure provided in this Act.

#### Certain Acts Prohibited

Sec. 7C.<sup>1</sup> No labor agent shall:

- (a) Knowingly admit, or allow to remain on the premises of such agent any prostitute, gambler, intoxicated person or any person of bad character.
- (b) Advertise his agency by means of cards, circulars, signs or in newspapers or other publications, unless all such advertisements shall set forth the name of the agent and the address of his labor office; nor shall any such licensed person use any letterheads or blanks not containing the name of such labor agent and the address of his labor office.
- (c) Publish or cause to be published any false or misleading advertisement or notice relating to his labor agency.
- (d) Give any false information or make any false representation concerning employment to any applicant for employment.
- (e) Send out an applicant for employment to any prospective employer without first having obtained a bona fide written order from such prospective employer.
- (f) Furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill fame, or assignation house, or any house or place of amusement kept for immoral purposes, the character of which such labor agent could have ascertained by reasonable diligence.
- (g) Furnish employment to any child in violation of the Statutes regulating the employment of children or the compulsory attendance at school.

(h) Divide or offer to divide, directly or indirectly, any fee charged or received with any person who secures workers through such agent, or to whom workers are referred by such agent.

(i) No labor agent shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees; or whose employees, or a part of them are out on a strike, without first apprising said person of the existence of said "lockout" or strike.

<sup>1</sup> So in enrolled bill. There are no Sections 7A or 7B.

#### License as Evidence

Sec. 8. Any application made by an employment or labor agent for a license, or a certified copy thereof under the hand and seal of the

Commissioner, shall be received as evidence in any Court in this State without the necessity of proving the execution thereof.

**Disposition of License Fees Collected**

Sec. 9. License fees collected under the provisions of this Act shall be deposited by the Commissioner in the State Treasury to the credit of the General Revenue Fund.

**To Display License**

Sec. 10. Every Labor Agent shall keep conspicuously posted in his office the license issued to him under this law.

**Doing Business Without License**

Sec. 11. Any person acting as a Labor Agent, as defined by this Act, without having first filed with the Commissioner of Labor Statistics of the State of Texas, an application for license as Labor Agent as provided by this Act, and/or without having first paid all State and county occupation taxes, and annual license fee as provided by law, or without having first secured a State license as provided, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

**Authority of the Commissioner**

Sec. 12. The Commissioner of the Bureau of Labor Statistics and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; and when such arrest has been made, the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such employment or labor agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment or labor agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to cancel the license of such agent in accordance with the provisions of Section 5 of this Act.

**Punishment**

Sec. 13. Unless otherwise provided for in this Act, any employment or labor agent who violates any provision of this Act shall be fined not less than Twenty-five Dollars (\$25), nor more than Two Hundred Dollars (\$200).

**Providing a Saving Clause**

Sec. 14. That in the event any section, or part of section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections, or parts of sections of this Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative section, or part of section or provision,

had not been included. In the event any penalty, right or remedy created or given in any section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or inoperative part, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions.

**Repealing Conflicting Laws**

Sec. 15. Chapter 67, Page 86, General Laws of the Forty-eighth Legislature, 1943,<sup>1</sup> is specifically repealed, and all laws or parts of laws in conflict with provisions of this Act are hereby repealed, except that all valid licenses heretofore issued by the Bureau of Labor Statistics and in force at the time of the effective date of this Act shall continue in force until their expiration date, or are cancelled according to the provisions of this Act.

[Acts 1949, 51st Leg., p. 434, ch. 234; Acts 1961, 57th Leg., p. 267, ch. 142, § 1.]

<sup>1</sup> Article 5221a-4, Penal Code (1925), art. 1593a (repealed).

**Art. 5221a-6. Private Employment Agency Law**

**Definitions as Used in the Act**

Sec. 1. (a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from any person seeking employment or employers in payment for any service, either directly or indirectly.

(c) "Employer" means any person employing or seeking to employ any employee.

(d) "Applicant" means any person engaging the services of a private employment agency for the purpose of securing employment or any person placed by a private employment agency with an employer.

(e) "Private Employment Agency" means any person, place or establishment within this state who for a fee or without a fee offers or attempts, either directly or indirectly, to procure employment for employees or procures or attempts to procure employees for employers, except as hereinafter exempted from the provisions hereof.

(f) "Commissioner" shall mean the Commissioner of the Bureau of Labor Statistics, and he shall administer and enforce the provisions of this Act and the rules and regulations promulgated by the board and in all matters relating to the enforcement of this Act, shall be

guided by the instructions and decisions of the board.

(g) "Deputy or inspector" shall mean any person who is duly authorized by the commissioner to act in that capacity.

(h) "Operator" shall mean the individual or individuals who have the responsibility for the day-to-day management, supervision and conduct of a private employment agency; and an operator may manage more than one office.

(i) "Board" shall mean the Texas Private Employment Agency Regulatory Board.

#### Exceptions

Sec. 2. The provisions of this Act shall not apply to agencies engaged solely in the procurement of employment for public school teachers and administrators; the provisions of this Act shall not apply to any employment agency established and operated by this state, the United States government, or any municipal government of this state; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within or without this state, nor to any common carrier operating in this state who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this state, provided that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly is exacted from a worker, then said employer is deemed a private employment agency and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this state where no fee is charged or collected, either directly or indirectly for employment given; the provisions of this Act shall not apply to persons acting for members of their own family. The provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency, nor to any veterans' association or organization or labor union; nor to any nurses' organization operated and conducted by registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; the provisions of this Act shall not apply to a labor agency engaged exclusively in the business of procuring common laborers or agricultural workers for employers or any person engaged exclusively in the business of procuring or attempting to procure jobs for common laborers or agricultural workers; the provisions of this Act shall not apply to any person conducting a business which consists of employing individuals directly for the purpose of furnishing part-time or temporary help to others.

#### Creation and Composition of the Board

Sec. 3. (a) The Texas Private Employment Agency Regulatory Board is hereby created. Its main office is in Austin, Texas, at the location of the office of the commissioner.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the Senate.

(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas and shall have been actively engaged in the private employment agency business as an operator owning an interest in a private employment agency in the State of Texas for a period of five years next preceding the date of his appointment.

(d) The Board shall be composed of four members who at the time of their appointment operate an agency which is a part of a multiple-office or franchise operation; five members who at the time of their appointment operate an agency which is a single-office operation. Not more than one person from any one multiple-office or franchise operation may serve on the board simultaneously. For the purpose of this section agencies belonging or subscribing to a referral system shall not be considered as a multiple-office or franchise operation because of such membership in or subscription to such referral service.

(e) Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring on January 31, 1971, three for terms expiring on January 31, 1973, and three for terms expiring on January 31, 1975. If any member of the board ceases to own an interest in a private employment agency, he automatically vacates his office, which shall be filled by appointment as in the case of other vacancies.

(f) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

(g) The board shall formally elect a chairman and secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

(h) Six members of the board constitute a quorum for the transaction of business and may act for the board. The board shall adopt a seal. The board shall prepare and preserve minutes and other records of its proceedings and action.

(i) Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending

meetings of the board, including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or secretary-treasurer of the board.

Applications for License to Maintain and Operate a  
Private Employment Agency

Sec. 4. Applications for license to maintain and operate a private employment agency shall be made by a licensed operator and shall be accompanied by a fee of \$150. Separate applications shall be made for each unit or location where a private employment agency is to be operated and for which a license is sought. Each license shall expire on August 31 of each year and shall be renewable as hereinafter provided. The commissioner shall allow credit for any unused portion of the licenses outstanding on the effective date hereof.

Application for License as an Operator

Sec. 5. (a) Application for a license as an operator may be made by and shall be issued to any person who

- (1) is a citizen of the United States,
- (2) has been a resident of the State of Texas for one year next preceding the filing of said application,
- (3) is of good moral character,
- (4) has never been convicted of an offense involving moral turpitude, and
- (5) successfully passes the examination prescribed herein.

(b) The application shall be accompanied by the annual license fee of \$15 plus an examination fee of \$25. In the event the examination is not passed, the \$15 fee shall be refunded but the \$25 shall not. All operators' licenses shall expire on August 31st of each year.

Application Forms

Sec. 6. All applications for a license hereunder shall be made upon forms provided by the Bureau of Labor Statistics and shall state such information as the board and the commissioner may require, which shall include affirmative evidence of ability to comply with reasonable standards, rules, and regulations as are lawfully prescribed hereunder.

Renewal of Licenses

Sec. 7. (a) A private employment agency license may be renewed annually by the operator thereof filing an application upon the forms provided and the payment of a \$150 renewal fee.

(b) An operator's license may be renewed annually by the operator by the filing of application for renewal upon forms provided for such renewal and the payment of \$15 renewal fee.

Bond

Sec. 8. Each applicant for a private employment agency license or renewal shall, before such license is issued, make and file with the commissioner a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of \$5,000 payable to the State of Texas; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions, and requirements of this Act, and that the principal, his agents or representatives will not make any false representation or statement to any person soliciting assistance from him for employees or employment, or solicited by him to accept employment. Said bond is to further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, his subagent or representatives, or any violation of any provision of this Act thereof by such agent, subagent or representative, shall be entitled to bring suit thereon. Provided, however, that one such bond shall suffice where the same person shall make application for more than one office.

Examinations

Sec. 9. (a) The examination for an operator's license shall be prepared by the board and shall cover the laws and regulations relating to the operations of a private employment agency, the laws relating to discrimination in employment and related to labor legislation, and general matters related to the management and operation of a private employment agency. The questions for such examination shall be taken from a list of questions which shall have been furnished to the individual taking such examination together with a form of acceptable answers thereto upon request.

(b) All examinations required by this Act shall be given at such times and places as the board may direct, provided, however, such examinations shall be given at least every 60 days.

Processing of Applications

Sec. 10. The commissioner, upon receiving an application for any type of license, shall inspect or cause to be inspected said application and shall make such investigation as may be necessary to determine that the applicant is qualified; provided, however, that all applications must be accepted and approved, or a date set for examination, or rejected, as the case may be, within 30 days of the date of filing thereof. In the event of examination being necessary, the license shall be issued or denied within 30 days of the taking of said examination. Any applicant, upon request to the commissioner, may see his examination papers within 90 days immediately following the announcement of the date a license has been denied to him as a result of his having failed his examination.

## Grandfather Clause

Sec. 11. All private employment agencies in business and operating and holding a license as a private employment agent on September 1, 1969, shall be entitled to be licensed under this Act, and all individuals functioning as an operator of a private employment agency holding a license from the State of Texas on September 1, 1969, shall be entitled to receive a license as an operator under this Act, upon filing an application before December 1, 1969, upon a form provided, and upon payment of the fee as prescribed herein, without meeting the examination requirements of Section 5 hereof.

## Inspection

Sec. 12. The commissioner, his deputies or inspectors, are hereby authorized and directed to enforce the provisions of this Act and the rules and regulations promulgated by the board.

## Conduct

Sec. 13. (a) Employment agencies licensed under this act shall not:

(1) impose any fees for the registration of applicants for employment or any other fee of applicants except for the furnishing of employment referrals which result in the applicant obtaining employment;

(2) engage or attempt to engage in the splitting or sharing of fees with an employer, an agent or other employee of an employer, or other person to whom employment service has been furnished or any other person not authorized to charge a fee under this act;

(3) charge a fee greater than that authorized and promulgated by the Board;

(4) make, give, or cause to be made or given to any applicant for employees or employment any false promise, misrepresentation or inaccurate or misleading statement or information if such agency had knowledge or should have had knowledge of such falsity, misrepresentation, or inaccurate or misleading statement or information;

(5) procure or attempt to procure the discharge of any person from his employment;

(6) unduly influence an employee to quit his employment for the purpose of obtaining other employment through such agency;

(7) require applicants for employment to subscribe to any publication or incidental service or contribute to the cost of advertising;

(8) refer any person to employment deleterious to health or morals if the agency had knowledge or should have had knowledge of such conditions;

(9) refer any employee or applicant for employment to a place where a strike or lockout exists without furnishing such employee or applicant with a written state-

ment as to the existence of such strike or lockout, if the agency had knowledge or should have had knowledge of such facts or conditions, a copy of which statement signed by the employee or applicant shall be kept on file for one year after the date thereof;

(10) make any referral to an employment or occupation prohibited by law;

(11) refer any applicant for employment except upon a valid job order therefor;

(12) make or cause to be made or use any name, sign, or advertising device bearing a name which may be similar to or reasonably be confused with the name of a government agency or which is false or misleading relating to their employment agency;

(13) knowingly and willfully violate any law of this state or the United States.

(b) Employment agencies licensed under this act shall:

(1) include their agency name and the address of such agency in all advertising;

(2) keep, maintain and permit inspection thereof, adequate records to evidence compliance with this law and all other laws of this state and of the United States;

(3) furnish receipts to all applicants for all payments made by such applicants in a form prescribed by the Board.

(c) No employer seeking employees, and no person seeking employment, shall knowingly make any false statement or conceal any material fact for the purpose of obtaining employees, or employment by or through any private employment agency.

(d) The Board, the Commissioner or his deputies may inspect the records of any licensee hereunder under reasonable circumstances during normal business hours and the Board shall have subpoena duces tecum powers for all records relating to the services of an agency performing services hereunder.

## Injunction

Sec. 14. Any person who shall operate a private employment agency, or who shall conduct an employment office, without first procuring such licenses as required and provided for in this Act may be enjoined from unlawfully pursuing such business or occupation, and the attorney general shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of this Act is hereby authorized to maintain in the proper court of said county a suit in the name of the State of Texas to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing suit to verify the pleadings or for the state to execute any bond as a condi-



tion precedent to the issuing of any injunction or restraining order hereunder.

**Powers of the Board**

Sec. 15. (a) The board is authorized to establish and promulgate a schedule of permissible maximum fees allowed to be charged to applicants by private employment agencies in the performance of their services.

(b) The board may promulgate provisions for the issuance of a temporary license for operators for emergency situations and for transfer of a private employment agency license.

(c) The board shall promulgate procedural rules and regulations only, consistent with the provisions of this Act, to govern the conduct of its business and proceedings. Notwithstanding any other provisions of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary.

(d) All board meetings considering any of the matters contained in this section except under subsection (e) hereof shall be held only after notice of such meeting and the matters to be considered thereat have been given to every license holder by mail at least ten (10) days prior to the date of hearing.

(e) Any license issued under this Act may be revoked by the board upon a finding by the board that the holder of such license has been convicted of violating any of the laws of the United States or of this state involving moral turpitude or is guilty of violating any of the provisions of this act; provided, however, the holder of such license shall be entitled to notice, and such notice shall contain a statement which will accurately apprise such license holder of that of which he is accused and shall set the time for hearing not sooner than 30 days after the date of mailing of such notice, and such license holder shall be entitled to be present at the hearing and represented by an attorney. All notices under this section shall be mailed to the last known address of the license holder as reflected in the license holder's file by certified or registered mail.

**Appeal**

Sec. 16. (a) Any person aggrieved by any decision of the board relating to the issuance, denial, revocation, or refusal to renew a license may, within 60 days after the date of the decision, appeal by filing a petition in the district court of the county of his residence. Any person aggrieved by any other decision of the board may, within 60 days after the date of the decision, appeal by filing a petition in a district court of Travis County. All such appeals

shall be tried de novo, and the substantial evidence rule shall not apply.

(b) Any person affected or aggrieved by any rule or regulation promulgated under this Act may sue in a district court of Travis County for a declaratory judgment as to the validity of the rule or regulation or the validity of its application to him. Process shall be served on the attorney general and the commissioner. The provisions of the Uniform Declaratory Judgments Act (Article 2524-1, Vernon's Texas Civil Statutes) apply to the extent they may be made applicable.

**Penalty**

Sec. 17. From and after the effective date hereof it shall be unlawful for any person to engage in the private employment agency business as herein defined without having first complied with all of the requirements hereof and any person who violates or fails to so comply with the provisions hereof shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 or by imprisonment of not more than 6 months or by both such fine and imprisonment. Each day of such violation shall constitute a separate offense.

**Disposition of Fees**

Sec. 18. The commissioner shall deposit all money received by him from license fees under the provisions of this Act in the state treasury to the credit of the general revenue fund. All money derived from examination fees shall be deposited in a bank and shall be used only to cover the expense of preparing, giving, and grading examinations, as authorized by the board.

[Acts 1949, 51st Leg., p. 453, ch. 245; Acts 1961, 57th Leg., p. 267, ch. 142, § 2; Acts 1963, 58th Leg., p. 1131, ch. 436, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 2625, ch. 871, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2424, ch. 772, §§ 1, 2, eff. June 8, 1971.]

Section 3 of the 1971 amendatory act provided: "The members of the Texas Private Employment Agency Regulatory Board holding office on the effective date of this Act shall continue to hold office for the terms to which they were appointed. Upon expiration of the terms of present board members, the governor shall make appointments to fill such vacancies so as to effectuate the ratio of four members of the board from multiple-office or franchise operations and five members of the board from single-office operations."

**CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION**

**Article**

- 5221b-1. Benefits.
- 5221b-1a. Repealed.
- 5221b-2. Benefit Eligibility Conditions.
- 5221b-2a. Prohibitions Against Denial of Benefits.
- 5221b-3. Disqualification for Benefits.
- 5221b-4. Claims for Benefits.
- 5221b-4a. Extended Benefits.
- 5221b-5. Contributions.
- 5221b-5a. Reimbursements.
- 5221b-6. Duration of Coverage and Elections.
- 5221b-6a. Repealed.
- 5221b-7. Unemployment Compensation Fund.
- 5221b-7a. Transfer of Funds.
- 5221b-7b. Moneys Appropriated to Pay Benefits and Re-funds.

## Article

- 5221b-8. Texas Employment Commission.
- 5221b-9. Administration.
- 5221b-9a. Use of Records.
- 5221b-9b. Destruction of Records.
- 5221b-10. Employment Service.
- 5221b-11. Unemployment Compensation Administration Fund.
- 5221b-12. Collection of Contributions.
- 5221b-13. Protection of Rights and Benefits.
- 5221b-14. Penalties.
- 5221b-15. Representation in Court.
- 5221b-15a. Reciprocal Arrangements.
- 5221b-16. Nonliability of State.
- 5221b-17. Definitions.
- 5221b-17a. Repeal; Saving Clause.
- 5221b-18. Repealed.
- 5221b-19. Repeal or Amendment.
- 5221b-20. Partial Invalidity; Separability of Provisions.
- 5221b-21. Powers of Commission.
- 5221b-22. Termination of Act.
- 5221b-22a. Unemployment Compensation Special Administration Fund.
- 5221b-22b. Title.
- 5221b-22c. Unemployment Compensation Commission.
- 5221b-22d. Coverage of State Employees.
- 5221b-22e. Conformity With Federal Statutes.
- 5221b-22aa. Use of Fund for Payment of Legislative Expenses.
- 5221b-23. Expired.
- 5221b-24. Repeal; Saving Clause.

## Art. 5221b-1. Benefits

(a) **Payment of Benefits:** On and after January 1, 1938, benefits shall become payable from the fund. All benefits shall be paid through the Texas Employment Commission, in accordance with such regulations as the Commission may prescribe.

(b) **Benefit Amount for Total Unemployment:** Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-fifth (1/25) of his wages received from employment by employers during that quarter in his base period in which wages were highest, provided that:

(1) If such rate is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1); and

(2) Such rate shall not be more than Sixty-three Dollars (\$63) per benefit period nor less than Fifteen Dollars (\$15) per benefit period.

(c) **Benefit for partial unemployment:** Each eligible individual who is partially unemployed in any benefit period shall be paid with respect to such benefit period a partial benefit, provided that such individual shall meet the requirements of subsection 4(a) of this Act.<sup>1</sup> Such partial benefit shall be the benefit amount plus (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater, less the wages earned during such benefit period, provided that if the result of such computation is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1).

(d) **Duration of Benefits:** The Commission shall establish wage credits for each individual by crediting him with the wages for employment received by him during his base period from employers. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of:

(1) Twenty-six (26) times his benefit amount, or

(2) Twenty-seven per cent (27%) of such wage credits; provided that if such is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1).

(e) **Benefit Wage Credits:** "Benefit wage credits" means those wages as defined in this subsection of the Act, which are used in determining an individual's right to benefits. "Wages" as used in this Section shall be as defined in subsection (n) of Section 19 of this Act,<sup>2</sup> except that the four-thousand-two-hundred-dollar limitation on wages as set out in subsection (n)(1) of Section 19 shall not be applicable for the purposes of this Section 3 to remuneration received after December 31, 1971; provided that, for the purposes of this Section 3, wages received by an individual in any calendar year after December 31, 1967, shall include all remuneration from each employer for employment up to the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code of 1954), as amended, or as it may hereafter be amended;<sup>3</sup> and provided further, that wages which have been used to qualify an individual for regular benefits under this Act or under any other unemployment compensation law shall not be used again to qualify such individual for regular benefits.

If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

(f) **Equal Treatment:** Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; provided that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3; Acts 1937, 45th Leg., p. 121, ch. 67, § 1; Acts 1939, 46th Leg., p. 436, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 1; Acts 1949, 51st Leg., p. 282, ch. 148, § 1; Acts 1955, 51th Leg., p. 399, ch. 116, § 1; Acts 1955, 54th Leg., p. 1310, ch. 517, § 1; Acts 1957, 55th Leg., p. 1350, ch. 460, § 1; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 1; Acts 1967, 60th Leg., p. 683, ch. 287, § 1, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2733, ch. 892, § 1, eff. Jan. 1, 1972; Acts 1971, 62nd Leg., p. 2777, ch. 900, § 1, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-2(a).

<sup>2</sup> Article 5221b-17(n).

<sup>3</sup> 26 U.S.C.A. § 3121.

**Art. 5221b-1a. Repealed by Acts 1955, 54th Leg., p. 399, ch. 116, § 14**

**Art. 5221b-2. Benefit Eligibility Conditions**

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Subsection 6(a) of this Act;<sup>1</sup>

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received benefit wage credits for employment by employers of not less than Five Hundred Dollars (\$500) and has total benefit wage credits in his base period of not less than one and one-half (1½) times his high quarter benefit wage credits in his base period, or within at least one quarter of his base period received wages for employment by employers equal to two-thirds (⅔) of the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code),<sup>2</sup> as amended, or as it may hereafter be amended, provided that any claimant who has had a prior benefit year must have earned wages of Two Hundred Fifty Dollars (\$250) or more subsequent to the beginning date of the prior benefit year.

(f) Prior to the first payment of benefits following an initial claim he has been totally or partially unemployed for a waiting period of seven (7) consecutive days. No week shall be counted as a waiting period week for the purposes of this Subsection:

(1) Unless he has registered for work at an employment office in accordance with Subsection (a) of this Section;

(2) Unless it is a week following the filing of an initial claim;

(3) Unless he reports at an office of the Commission and certifies that he has met the waiting period require-

ments herein prescribed for the preceding seven (7) days;

(4) If benefits have been paid or are payable with respect thereto;

(5) If the individual does not meet the eligibility conditions of Subsections (c) and (d) of this Section 4;

(6) If the individual has been disqualified for benefits for such seven (7) day period under the provisions of Subsections (a), (b), (c), or (d) of Section 5 of this Act;<sup>3</sup>

(7) Provided, notwithstanding any other provision of this Subsection (f), when an individual has been paid benefits in his current benefit year equal to four times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of the Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 4; Acts 1937, 45th Leg., p. 121, ch. 67, § 2; Acts 1939, 46th Leg., p. 436, § 2; Acts 1943, 48th Leg., p. 585, ch. 343, § 2; Acts 1945, 49th Leg., p. 589, ch. 347, § 2; Acts 1949, 51st Leg., p. 282, ch. 148, § 2; Acts 1955, 54th Leg., p. 399, ch. 116, § 2; Acts 1955, 54th Leg., p. 1310, ch. 517, § 2; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 4; Acts 1967, 60th Leg., p. 683, ch. 287, § 2, eff. Oct. 1, 1967; Acts 1969, 61st Leg., p. 2054, ch. 709, § 1, eff. June 12, 1969.]

<sup>1</sup> Article 5221b-4(a).

<sup>2</sup> 26 U.S.C.A. § 3121.

<sup>3</sup> Article 5221b-3(a) to (d).

**Art. 5221b-2a. Prohibitions Against Denial of Benefits**

(a) Benefits shall not be denied to an individual because he is in training with the approval of the Commission, nor shall such individual be denied benefits with respect to any benefit period in which he is in training with the approval of the Commission by reason of the application of provisions in this Act relating to availability for work, active search for work, or refusal to apply for, or a refusal to accept, suitable work. Approval of training shall be in accordance with rules prescribed by the Commission.

(b) Benefits shall not be denied or reduced to an individual solely because he files a claim in another state (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for unemployment compensation.

[Acts 1971, 62nd Leg., p. 2734, ch. 892, § 2, eff. Jan. 1, 1972.]

**Art. 5221b-3. Disqualification for Benefits**

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission

according to the circumstances in each case.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the seriousness of the misconduct.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than thirteen (13) benefit periods following the failure, as described above to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act,<sup>1</sup> no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the

same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,<sup>2</sup> or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

(f) In determining the number of benefit periods during which any individual is entitled to receive benefits in a benefit year, the Commission shall deduct any period of disqualification as provided in subsections (a), (b), and (c) of this Section from the total number of benefit periods during which he would otherwise be entitled to receive benefits except for such disqualification; provided, that in no case shall the number of benefit periods so deducted exceed the number of benefit periods during which the claimant is then eligible to receive benefits except for such disqualification; and provided further, that in no event shall a disqualification imposed under subsection (a) or (c) of this Section result in a total reduction of the claimant's benefit rights in his benefit year.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 5; Acts 1939, 46th Leg., p. 436, § 3; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1(a); Acts 1943, 48th Leg., p. 585, ch. 343, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, § 3; Acts 1955, 54th Leg., p. 399, ch. 116, § 3; Acts 1955, 54th Leg., p. 1211, ch. 484, § 1; Acts 1955, 54th Leg., p. 1310, ch. 517, § 3; Acts 1957, 55th Leg., p. 1350, ch. 460, § 2; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 5; Acts 1963, 58th Leg., p. 543, ch. 200, § 1; Acts 1971, 62nd Leg., p. 2734, ch. 892, § 3, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> 42 U.S.C.A. § 401 et seq.

#### Art. 5221b-4. Claims for Benefits

(a) Filing: Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain in places accessible to individuals in his employ printed notices giving general information about filing a claim for unemployment benefits. Such notices shall be supplied by the Commission to each employer without cost to him.

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within ten (10) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act,<sup>1</sup> except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 of this Act,<sup>2</sup> as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act,<sup>3</sup> and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflect-

ing his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records. If an appeal is duly filed, benefits with respect to the period of time prior to the final determination of the Commission shall be paid only after such determination; provided, that if an appeal tribunal affirms a determination of an examiner, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no charge-back shall be made to the employer's account by reason of such payment.

(c) Appeals: Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the determination of the examiner. The parties to the appeal shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten (10) days after the date of mailing of such decision, further appeal is initiated pursuant to subsection (e) of this Section.

(d) Appeal Tribunals: To hear and decide disputed claims, the Commission, if it is necessary to insure prompt disposal of cases on appeal, shall establish one or more impartial appeal tribunals consisting in each case of a salaried examiner.

(e) Commission Review: The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof. The Commission shall promptly mail

to the parties before it a copy of its findings and decision.

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees: Witnesses subpoenaed pursuant to this Section shall be allowed fees at a rate fixed by the Commission, and such fees shall be deemed a part of the expense of administering this Act.<sup>4</sup>

(h) Appeal to Courts: Any decision of the Commission shall become final ten (10) days after the date of mailing thereof, unless, within such ten (10) days, the appeal is reopened by Commission order or a party to the appeal files a written motion for rehearing, and judicial review of any final decision of the Commission shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies (not including a motion for rehearing) before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within ten (10) days after the decision of the Commission has become final, and not before, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant, provided that if a claimant is a non-resident of the State of Texas such action may be filed in a court of competent jurisdiction in Travis County, Texas, or in the county in Texas in which the last employer has his principal place of business, or in the county of claimant's last residence in Texas. Such trial shall be de novo. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence

over all other civil cases except cases arising under the Workmen's Compensation Law<sup>5</sup> of this State. An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceedings under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 6; Acts 1939, 46th Leg., p. 436, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, § 4; Acts 1955, 54th Leg., p. 399, ch. 116, § 4; Acts 1957, 55th Leg., p. 1350, ch. 460, § 3; Acts 1967, 60th Leg., p. 683, ch. 287, § 3, eff. Oct. 1, 1967.]

<sup>1</sup> Article 5221b-5(c)(2).

<sup>2</sup> Article 5221b-3.

<sup>3</sup> Article 5221b-1 et seq.

<sup>4</sup> Article 5221b-1 et seq.

<sup>5</sup> Article 8306 et seq.

#### Art. 5221b-4a. Extended Benefits

(a) Definitions: As used in this Section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) begins with the third (3rd) week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a State "on" indicator; and

(B) ends with either of the following weeks, whichever occurs last:

(i) the third (3rd) week after the first (1st) week for which there is both a national "off" indicator and a State "off" indicator, or

(ii) the thirteenth (13th) consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a State "on" indicator before the fourteenth (14th) week following the end of a prior extended benefit period which was in effect with respect to this State; and

Provided further, that no extended benefit period may begin with a week beginning before January 1, 1972.

(2) There is a national "on" indicator for a week if the United States Secretary of Labor determines that, for each of the three (3) most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent (4.5%).

(3) There is a national "off" indicator for a week if the United States Secretary of Labor determines that, for each of the three (3) most recent calendar months ending before such week, the rate of in-

sured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent (4.5%).

(4) There is a State "on" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this Act:

(A) equaled or exceeded one hundred and twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four percent (4%).

(5) There is a State "off" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this Act:

(A) was less than one hundred and twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years, or

(B) was less than four percent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing:

(A) the average weekly number of individuals filing claims in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the Commission on the basis of the Commission's reports to the United States Secretary of Labor, by

(B) the average monthly employment covered under this Act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(7) "Regular benefits" means benefits payable to an individual under this Act or under any other state law (including benefits payable to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85<sup>1</sup>) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this

Section for benefit periods of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the benefit periods in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any benefit periods thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any benefit period of unemployment in his eligibility period:

(A) has received, prior to such benefit period, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such benefit period;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or

(B) had a benefit year that expired prior to such benefit period and has no, or insufficient, wage credits on the basis of which he could establish a new benefit year that would include such benefit period; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act<sup>2</sup> the Trade Expansion Act of 1962,<sup>3</sup> the Automotive Products Trade Act of 1965,<sup>4</sup> or such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and

(ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(11) "State Law" means the unemployment compensation law of any state that is approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954.<sup>5</sup>

(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and the Payment of, Extended Benefits: The provisions of this Act, and the rules or regulations of the

Commission which apply to claims for, and the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits except when the result would be inconsistent with the other provisions of this Section.

(c) Eligibility Requirements for Extended Benefits: An individual shall be eligible to receive extended benefits with respect to any benefit period of unemployment in his eligibility period only if the Commission finds that with respect to such benefit period:

(1) he is an "exhaustee" as defined in subsection (a)(10) of this Section, and

(2) he satisfies the requirements of this Act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly Extended Benefit Amount: The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total Extended Benefit Amount: The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be fifty percent (50%) of the total amount of regular benefits which were payable to him under this Act in his applicable benefit year.

(f) (1) Beginning and termination of extended benefit period: Whenever an extended benefit period is to become effective in this State (or in all states) as a result of a State or a national "on" indicator, or an extended benefit period is to be terminated in this State as a result of State and national "off" indicators, the Commission shall make a public announcement thereof in accordance with rules prescribed by the Commission.

(2) Computations required by the provisions of subsection (a)(6) of this Section shall be made by the Commission in accordance with regulations prescribed by the United States Secretary of Labor.

(g) Financing:

(1) Extended benefits shall be paid from the Unemployment Compensation Fund.

(2) Payments made by the Federal Government for its share of extended benefits shall be deposited into the Unemployment Compensation Fund.

(3) Fifty percent (50%) of the extended benefit payments based on wage credits from a reimbursing employer shall be charged to the account of such employer and reimbursed by such employer in the same manner as regular benefit payments, and such payments shall not be used in determining the replenishment ratio provided for in subsection 7(c)(5) of this Act.<sup>6</sup>



(4) Fifty percent (50%) of extended benefit payments based on wage credits from a taxed employer shall be deemed chargebacks and charged to the account of such employer and used in determining the benefit ratio of such employer unless it was determined that chargebacks were not to be made against the account of the employer when regular benefits with respect to an individual were paid. Fifty percent (50%) of extended benefit payments based on wage credits from a taxed employer (whether or not charged to an employer) shall be used in the numerator of the replenishment ratio. Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio.

(5) When a taxed base period employer is notified of a claim for benefits under subsection 7(c)(2) of this Act,<sup>7</sup> such notice shall state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as twenty-five percent (25%). No further notice of potential chargeback regarding extended benefit payments need be given to a taxed base period employer when the extended benefits are paid.

[Acts 1943, 48th Leg., p. 585, ch. 343, § 4; Acts 1971, 62nd Leg., p. 2735, ch. 892, § 4, eff. Jan. 2, 1972.]

<sup>1</sup> 5 U.S.C.A. § 8501 et seq.

<sup>2</sup> 45 U.S.C.A. § 351 et seq.

<sup>3</sup> 19 U.S.C.A. § 1801 et seq.

<sup>4</sup> 19 U.S.C.A. § 2001 et seq.

<sup>5</sup> 26 U.S.C.A. § 3304.

<sup>6</sup> Article 5221b-5(c)(5).

<sup>7</sup> Article 5221b-5(c)(2).

Acts 1971, 62nd Leg., p. 2751, ch. 892, in sections 12 to 14 provided:

"Sec. 12. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission, which have accrued thereunder, including, without limiting or without being limited thereto, the right to collect contributions, interest, or penalties that have accrued, and the right of prosecution for violation of any provision thereof; nor shall such repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the Commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1972, shall be effective for the remainder of such benefit year, and provided further, that nothing in this Section shall be construed as preventing Section 6-A of the Act from being effective on and after January 1, 1972.

"Sec. 13. If any word, phrase, sentence, paragraph, subsection or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity.

"Sec. 14. This Act takes effect on January 1, 1972."

#### Art. 5221b-5. Contributions

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he

is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such rules or regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(b) Rate of contributions: Each employer shall pay contributions equal to two and seven-tenths percentum (2- $\frac{7}{10}$ %) of wages paid by him with respect to employment, except as provided in subsection (c) of this Section.

(c) Experience rating:

(1) Each employer's contribution rate shall be two and seven-tenths percent (2.7%) until his account has been chargeable with benefits throughout each calendar month of the four (4) consecutive calendar quarters immediately preceding the date as of which such employer's rate is determined. The contribution rate of each employer who has had at least four (4) such calendar quarters of compensation experience shall be determined as provided below; except that the contribution rate of any employing unit which becomes an employer for the first time during the calendar year 1972, other than one which first becomes an employer because of the provisions of subsection 19(f)(2) of this Act,<sup>1</sup> shall be one percent (1%) rather than two and seven-tenths percent (2.7%) until such time as his account has been chargeable with benefits for four (4) consecutive calendar quarters and an experience rate is computed for him in accordance with this Act.

(2) (A) With respect to any benefit year beginning after September 30, 1967, the amount of benefit payments paid to a claimant shall be charged to the account of the claimant's base period employer or employers. With respect to any benefit year beginning prior to September 30, 1967, if the first benefit payment during such benefit year is not made until after September 30, 1967, then the amount of benefit payments shall be charged to the account of the claimant's base period employer or employers. When a benefit payment is made to a claimant who has two or more employers in his base period the chargeback to each employer shall be allocated in direct proportion to the percentage of the claimant's total benefit wage credits paid by such employer. This process may be designated as charging benefits to an employer's account, and benefits thus charged may be designated as chargebacks.

The chargebacks of each employer for a given calendar quarter shall be the bene-

fits paid to all of his employees or former employees during such quarter; provided, that the chargebacks of an employer shall not include benefit payments which are based on wage credits of an employee or former employee, if the Commission finds that the employee's last separation from such employer's employment, prior to the benefit year in conjunction with which such base period was established, was (i) a separation required by a Federal or a Texas statute or a Texas municipal ordinance; or (ii) a separation for which a disqualification under subsections 5(a) or 5(b) of this Act<sup>2</sup> would have been imposed if such employer's employment of the employee or former employee had been the employee's last work; or (iii) a separation with respect to which a disqualification was imposed under subsection 5(a) or 5(b) of this Act;<sup>3</sup> and provided further that for the purpose of this paragraph the term "last separation" shall, with respect to an employee whose initial determination disqualified him for benefits under subsection 5(d) of this Act,<sup>4</sup> mean his next later separation from such employer's employment.

(2) (B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act,<sup>5</sup> and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential chargebacks. If any such employer desires to protest his potential chargebacks, he shall, within ten (10) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within ten (10) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time pre-

scribed by subsection 6(h) and subsection 6(i) of this Act<sup>6</sup> with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act,<sup>7</sup> the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within ten (10) days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a decision on such protest and may appeal within twelve (12) days from the date notice of such decision was mailed to him.

(3) For the purposes of this Section, benefits shall be deemed to have been paid at the time the claim therefor shall have been certified by the Commission to the State Comptroller for payment.

(4) The benefit ratio of each employer shall be a percentage equal to the total of his chargebacks for the thirty-six (36) consecutive completed calendar months immediately preceding the date as of which the employer's tax rate is determined divided by his total taxable wages for the same months on which contributions have been paid to the Commission on or before the last day of the month in which the computation date occurs; provided that, in the event the employer has less than three (3) years but at least four (4) calendar quarters of compensation experience throughout which his account has been chargeable with benefits, his benefit ratio shall be a percentage equal to the total of all of his chargebacks for all completed calendar months immediately preceding the date as of which such employer's tax rate is determined divided by his total taxable wages for the same months on which contributions have been paid to the Commission on or before the last day of the month in which the computation date occurs.

(5) The replenishment ratio for a calendar year is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator.

The numerator of the replenishment ratio shall be the total amount of benefits paid from the Unemployment Compensation Fund during the twelve (12) months ending September 30, of the preceding year, that are based on wage credits from taxed employers, less for the same period:

(A) the total amount of refunds of regular benefits that were based on wage credits from taxed employers



The Employer's Tax Rate Shall Be:

	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%
When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80
...									
1.20	0.83	0.91	1.00	1.08	1.16	1.25	1.33	1.41	1.50
1.21	0.82	0.90	0.99	1.07	1.15	1.23	1.32	1.40	1.48
1.22	0.81	0.90	0.98	1.06	1.14	1.22	1.31	1.39	1.47
1.23	0.81	0.89	0.97	1.05	1.13	1.21	1.30	1.38	1.46
1.24	0.80	0.88	0.96	1.04	1.12	1.20	1.29	1.37	1.45
1.25	0.80	0.88	0.96	1.04	1.12	1.20	1.28	1.36	1.44
1.26	0.79	0.87	0.95	1.03	1.11	1.19	1.26	1.34	1.42
1.27	0.78	0.86	0.94	1.02	1.10	1.18	1.25	1.33	1.41
1.28	0.78	0.85	0.93	1.01	1.09	1.17	1.25	1.32	1.40
1.29	0.77	0.85	0.93	1.00	1.08	1.16	1.24	1.31	1.39
1.30	0.76	0.84	0.92	1.00	1.07	1.15	1.23	1.30	1.38
1.31	0.76	0.83	0.91	0.99	1.06	1.14	1.22	1.29	1.37
1.32	0.75	0.83	0.90	0.98	1.06	1.13	1.21	1.28	1.36
1.33	0.75	0.82	0.90	0.97	1.05	1.12	1.20	1.27	1.35
1.34	0.74	0.82	0.89	0.97	1.04	1.12	1.19	1.26	1.34
1.35	0.74	0.81	0.88	0.96	1.03	1.11	1.18	1.25	1.33
1.36	0.73	0.80	0.88	0.95	1.02	1.10	1.17	1.25	1.32
1.37	0.72	0.80	0.87	0.95	1.02	1.09	1.16	1.24	1.31
1.38	0.72	0.79	0.86	0.94	1.01	1.08	1.15	1.23	1.30
1.39	0.71	0.79	0.86	0.93	1.01	1.08	1.15	1.22	1.29
1.40	0.71	0.78	0.85	0.93	1.00	1.07	1.14	1.21	1.28
1.41	0.70	0.78	0.85	0.92	0.99	1.06	1.13	1.20	1.27
1.42	0.70	0.77	0.84	0.91	0.98	1.05	1.12	1.19	1.26
1.43	0.69	0.76	0.84	0.91	0.97	1.04	1.11	1.18	1.25
1.44	0.69	0.76	0.83	0.90	0.97	1.04	1.11	1.18	1.25
1.45	0.68	0.76	0.82	0.89	0.96	1.03	1.10	1.17	1.24
1.46	0.68	0.75	0.82	0.89	0.95	1.02	1.09	1.16	1.23
1.47	0.68	0.74	0.81	0.88	0.95	1.02	1.08	1.15	1.22
1.48	0.67	0.74	0.81	0.87	0.94	1.01	1.08	1.14	1.21
1.49	0.67	0.73	0.80	0.87	0.93	1.00	1.07	1.14	1.20
1.50	0.66	0.73	0.80	0.86	0.93	1.00	1.06	1.13	1.20
1.51	0.66	0.72	0.79	0.86	0.92	0.99	1.05	1.12	1.19
1.52	0.65	0.72	0.78	0.85	0.92	0.98	1.05	1.11	1.18
1.53	0.65	0.71	0.78	0.84	0.91	0.98	1.04	1.11	1.17
1.54	0.64	0.71	0.77	0.84	0.90	0.97	1.03	1.10	1.16
1.55	0.64	0.70	0.77	0.83	0.90	0.96	1.03	1.09	1.16
1.56	0.64	0.70	0.76	0.83	0.89	0.96	1.02	1.08	1.15
1.57	0.63	0.70	0.76	0.82	0.89	0.95	1.01	1.08	1.14
1.58	0.63	0.69	0.75	0.82	0.88	0.94	1.01	1.07	1.13
1.59	0.62	0.69	0.75	0.81	0.88	0.94	1.00	1.06	1.13
1.60	0.62	0.68	0.75	0.81	0.87	0.93	1.00	1.06	1.12
...									

The Employer's Tax Rate Shall Be:

	1.0%	1.1%	1.2%	1.3%	1.4%	1.5%	1.6%	1.7%	1.8%
When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	1.90	2.00	2.10	2.20	2.30	2.40	2.50	2.60	2.70
...									
1.20	1.58	1.66	1.75	1.83	1.91	2.00	2.08	2.16	2.25
1.21	1.57	1.65	1.73	1.81	1.90	1.98	2.06	2.14	2.23
1.22	1.55	1.63	1.72	1.80	1.88	1.96	2.04	2.13	2.21
1.23	1.54	1.62	1.70	1.78	1.86	1.95	2.03	2.11	2.19
1.24	1.53	1.61	1.69	1.77	1.85	1.93	2.01	2.09	2.17
1.25	1.52	1.60	1.68	1.76	1.84	1.92	2.00	2.08	2.16
1.26	1.50	1.58	1.66	1.74	1.82	1.90	1.98	2.06	2.14
1.27	1.49	1.57	1.65	1.73	1.81	1.88	1.96	2.04	2.12

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.28	1.48	1.56	1.64	1.71	1.79	1.87	1.95	2.03	2.10
1.29	1.47	1.55	1.62	1.70	1.78	1.86	1.93	2.01	2.09
1.30	1.46	1.53	1.61	1.69	1.76	1.84	1.92	2.00	2.07
1.31	1.45	1.52	1.60	1.67	1.75	1.83	1.90	1.98	2.06
1.32	1.43	1.51	1.59	1.66	1.74	1.81	1.89	1.96	2.04
1.33	1.42	1.50	1.57	1.65	1.72	1.80	1.87	1.95	2.03
1.34	1.41	1.49	1.56	1.64	1.71	1.79	1.86	1.94	2.01
1.35	1.40	1.48	1.55	1.62	1.70	1.77	1.85	1.92	2.00
1.36	1.39	1.47	1.54	1.61	1.69	1.76	1.83	1.91	1.98
1.37	1.38	1.45	1.53	1.60	1.67	1.75	1.82	1.89	1.97
1.38	1.37	1.44	1.52	1.59	1.66	1.73	1.81	1.88	1.95
1.39	1.36	1.43	1.51	1.58	1.65	1.72	1.79	1.87	1.94
1.40	1.36	1.43	1.50	1.57	1.64	1.71	1.78	1.85	1.92
1.41	1.34	1.41	1.48	1.56	1.63	1.70	1.77	1.84	1.91
1.42	1.33	1.40	1.47	1.54	1.61	1.69	1.76	1.83	1.90
1.43	1.32	1.39	1.46	1.53	1.60	1.67	1.74	1.81	1.88
1.44	1.31	1.38	1.45	1.52	1.59	1.66	1.73	1.80	1.87
1.45	1.31	1.37	1.44	1.51	1.58	1.65	1.72	1.79	1.86
1.46	1.30	1.36	1.43	1.50	1.57	1.64	1.71	1.78	1.84
1.47	1.29	1.36	1.42	1.49	1.56	1.63	1.70	1.76	1.83
1.48	1.28	1.35	1.41	1.48	1.55	1.62	1.68	1.75	1.82
1.49	1.27	1.34	1.40	1.47	1.54	1.61	1.67	1.74	1.81
1.50	1.26	1.33	1.40	1.46	1.53	1.60	1.66	1.73	1.80
1.51	1.25	1.32	1.39	1.45	1.52	1.58	1.65	1.72	1.78
1.52	1.25	1.31	1.38	1.44	1.51	1.57	1.64	1.71	1.77
1.53	1.24	1.30	1.37	1.43	1.50	1.56	1.63	1.69	1.76
1.54	1.23	1.29	1.36	1.42	1.49	1.55	1.62	1.68	1.75
1.55	1.22	1.29	1.35	1.41	1.48	1.54	1.61	1.67	1.74
1.56	1.21	1.28	1.34	1.41	1.47	1.53	1.60	1.66	1.73
1.57	1.21	1.27	1.33	1.40	1.46	1.52	1.59	1.65	1.71
1.58	1.20	1.26	1.32	1.39	1.45	1.51	1.58	1.64	1.70
1.59	1.19	1.25	1.32	1.38	1.44	1.50	1.57	1.63	1.69
1.60	1.18	1.25	1.31	1.37	1.43	1.50	1.56	1.62	1.68
...									
...									

The Employer's Tax Rate Shall Be:

	1.9%	2.0%	2.1%	2.2%	2.3%	2.4%	2.5%	2.6%	2.7%
When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	2.80	2.90	3.00	3.10	3.20	3.30	3.40	3.50	3.60
...									
1.20	2.33	2.41	2.50	2.58	2.66	2.75	2.83	2.91	3.00
1.21	2.31	2.39	2.47	2.56	2.64	2.72	2.80	2.89	2.97
1.22	2.29	2.37	2.45	2.54	2.62	2.70	2.78	2.86	2.95
1.23	2.27	2.35	2.43	2.52	2.60	2.68	2.76	2.84	2.92
1.24	2.25	2.33	2.41	2.50	2.58	2.66	2.74	2.82	2.90
1.25	2.24	2.32	2.40	2.48	2.56	2.64	2.72	2.80	2.88
1.26	2.22	2.30	2.38	2.46	2.53	2.61	2.69	2.77	2.85
1.27	2.20	2.28	2.36	2.44	2.51	2.59	2.67	2.75	2.83
1.28	2.18	2.26	2.34	2.42	2.50	2.57	2.65	2.73	2.81
1.29	2.17	2.24	2.32	2.40	2.48	2.55	2.63	2.71	2.79
1.30	2.15	2.23	2.30	2.38	2.46	2.53	2.61	2.69	2.76
1.31	2.13	2.21	2.29	2.36	2.44	2.51	2.59	2.67	2.74
1.32	2.12	2.19	2.27	2.34	2.42	2.50	2.57	2.65	2.72
1.33	2.11	2.18	2.25	2.33	2.40	2.48	2.55	2.63	2.70
1.34	2.08	2.16	2.23	2.31	2.38	2.46	2.53	2.61	2.68
1.35	2.07	2.14	2.22	2.29	2.37	2.44	2.51	2.59	2.66
1.36	2.05	2.13	2.20	2.27	2.35	2.42	2.50	2.57	2.64
1.37	2.04	2.11	2.18	2.26	2.33	2.40	2.48	2.55	2.62
1.38	2.02	2.10	2.17	2.24	2.31	2.39	2.46	2.53	2.60
1.39	2.01	2.08	2.15	2.23	2.30	2.37	2.44	2.51	2.58
1.40	2.00	2.07	2.14	2.21	2.28	2.35	2.42	2.50	2.57

When the Replenishment Ratio is

If the Employer's Benefit Ratio percentage does not exceed: (Cont'd)

1.41	1.98	2.05	2.12	2.19	2.26	2.34	2.41	2.48	2.55
1.42	1.97	2.04	2.11	2.18	2.25	2.32	2.39	2.46	2.53
1.43	1.95	2.02	2.09	2.16	2.23	2.30	2.37	2.44	2.51
1.44	1.94	2.01	2.08	2.15	2.22	2.29	2.36	2.43	2.50
1.45	1.93	2.00	2.06	2.13	2.20	2.27	2.34	2.41	2.48
1.46	1.91	1.98	2.05	2.12	2.19	2.26	2.32	2.39	2.46
1.47	1.90	1.97	2.04	2.10	2.17	2.24	2.31	2.38	2.44
1.48	1.89	1.95	2.02	2.09	2.16	2.22	2.29	2.36	2.43
1.49	1.87	1.94	2.01	2.08	2.14	2.21	2.28	2.34	2.41
1.50	1.86	1.93	2.00	2.06	2.13	2.20	2.26	2.33	2.40
1.51	1.85	1.92	1.98	2.05	2.11	2.18	2.25	2.31	2.38
1.52	1.84	1.90	1.97	2.03	2.10	2.17	2.23	2.30	2.36
1.53	1.83	1.89	1.96	2.02	2.09	2.15	2.22	2.28	2.35
1.54	1.81	1.88	1.94	2.01	2.07	2.14	2.20	2.27	2.33
1.55	1.80	1.87	1.93	2.00	2.06	2.12	2.19	2.25	2.32
1.56	1.79	1.85	1.92	1.98	2.05	2.11	2.17	2.24	2.30
1.57	1.78	1.84	1.91	1.97	2.03	2.10	2.16	2.22	2.29
1.58	1.77	1.83	1.89	1.96	2.02	2.08	2.15	2.21	2.27
1.59	1.76	1.82	1.88	1.94	2.01	2.07	2.13	2.20	2.26
1.60	1.75	1.81	1.87	1.93	2.00	2.06	2.12	2.18	2.25

...

The Employer's Tax Rate Shall Be:

	2.8%	2.9%	3.0%	3.1%	3.2%	3.3%	3.4%	3.5%	3.6%
When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	3.70	3.80	3.90	4.00	4.10	4.20	4.30	4.40	4.50
...									
1.20	3.08	3.16	3.25	3.33	3.41	3.50	3.58	3.66	3.75
1.21	3.05	3.14	3.22	3.30	3.38	3.47	3.55	3.63	3.71
1.22	3.03	3.11	3.19	3.27	3.36	3.44	3.52	3.60	3.68
1.23	3.00	3.08	3.17	3.25	3.33	3.41	3.49	3.57	3.65
1.24	2.98	3.06	3.14	3.22	3.30	3.38	3.46	3.54	3.62
1.25	2.96	3.04	3.12	3.20	3.28	3.36	3.44	3.52	3.60
1.26	2.93	3.01	3.09	3.17	3.25	3.33	3.41	3.49	3.57
1.27	2.91	2.99	3.07	3.14	3.22	3.30	3.38	3.46	3.54
1.28	2.89	2.96	3.04	3.12	3.20	3.28	3.35	3.43	3.51
1.29	2.86	2.94	3.02	3.10	3.17	3.25	3.33	3.41	3.48
1.30	2.84	2.92	3.00	3.07	3.15	3.23	3.30	3.38	3.46
1.31	2.82	2.90	2.97	3.05	3.12	3.20	3.28	3.35	3.43
1.32	2.80	2.87	2.95	3.03	3.10	3.18	3.25	3.33	3.40
1.33	2.78	2.85	2.93	3.00	3.08	3.15	3.23	3.30	3.38
1.34	2.76	2.83	2.91	2.98	3.05	3.13	3.20	3.28	3.35
1.35	2.74	2.81	2.88	2.96	3.03	3.11	3.18	3.25	3.33
1.36	2.72	2.79	2.86	2.94	3.01	3.08	3.16	3.23	3.30
1.37	2.70	2.77	2.84	2.91	2.99	3.06	3.13	3.21	3.28
1.38	2.68	2.75	2.82	2.89	2.97	3.04	3.11	3.18	3.26
1.39	2.66	2.73	2.80	2.87	2.94	3.02	3.09	3.16	3.23
1.40	2.64	2.71	2.78	2.85	2.92	3.00	3.07	3.14	3.21
1.41	2.62	2.69	2.76	2.83	2.90	2.97	3.04	3.12	3.19
1.42	2.60	2.67	2.74	2.81	2.88	2.95	3.02	3.09	3.16
1.43	2.58	2.65	2.72	2.79	2.86	2.93	3.00	3.07	3.14
1.44	2.56	2.63	2.70	2.77	2.84	2.91	2.98	3.05	3.12
1.45	2.55	2.62	2.68	2.75	2.82	2.89	2.96	3.03	3.10
1.46	2.53	2.60	2.67	2.73	2.80	2.87	2.94	3.01	3.08
1.47	2.51	2.58	2.65	2.72	2.78	2.85	2.92	2.99	3.06
1.48	2.50	2.56	2.63	2.70	2.77	2.83	2.90	2.97	3.04
1.49	2.48	2.55	2.61	2.68	2.75	2.81	2.88	2.95	3.02
1.50	2.46	2.53	2.60	2.66	2.73	2.80	2.86	2.93	3.00
1.51	2.45	2.51	2.58	2.64	2.71	2.78	2.84	2.91	2.98
1.52	2.43	2.50	2.56	2.63	2.69	2.76	2.82	2.89	2.96
1.53	2.41	2.48	2.54	2.61	2.67	2.74	2.81	2.87	2.94
1.54	2.40	2.46	2.53	2.59	2.66	2.72	2.79	2.85	2.92

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed: (Cont'd)									
1.55	2.38	2.45	2.51	2.58	2.64	2.70	2.77	2.83	2.90	
1.56	2.37	2.43	2.50	2.56	2.62	2.69	2.75	2.82	2.88	
1.57	2.35	2.42	2.48	2.54	2.61	2.67	2.73	2.80	2.86	
1.58	2.34	2.40	2.46	2.53	2.59	2.65	2.72	2.78	2.84	
1.59	2.32	2.38	2.45	2.51	2.57	2.64	2.70	2.76	2.83	
1.60	2.31	2.37	2.43	2.50	2.56	2.62	2.68	2.75	2.81	
...										
...										
The Employer's Tax Rate Shall Be:										
	3.7%	3.8%	3.9%	4.0%	4.1%	4.2%	4.3%	4.4%	4.5%	

The Commission is authorized to extend the foregoing table by supplying additional replenishment ratios and by supplying additional employer benefit ratios using the same mathematical principles used in constructing said table.

Provided, that when the amount in the Unemployment Compensation Fund on the October 1 computation date immediately preceding the calendar year for which rates are being computed is in excess of the ceiling hereinafter defined, a reduction in the tax rate shown on the foregoing table, or as it may be extended, by one-tenth of one percent (1/10 of 1%) for each Five Million Dollars (\$5,000,000) or fraction thereof by which the amount in the Unemployment Compensation Fund is in excess of the ceiling shall be granted to each employer entitled to an experience tax rate, provided that no employer shall receive a tax rate reduction greater than two and two-tenths percent (2.2%) under this provision; provided further, notwithstanding the foregoing provisions, that no employer shall be permitted to pay contributions at a rate less than one-tenth of one percent (1/10 of 1%) and that no employer shall be required to pay contributions at a rate greater than four percent (4%) except as hereinafter provided. When the amount in the Unemployment Compensation Fund on the October 1 computation date immediately preceding the calendar year for which rates are being computed is less than Two Hundred Twenty-five Million Dollars (\$225,000,000), an increase in the tax rate by one-tenth of one percent (1/10 of 1%) for each Five Million Dollars (\$5,000,000) or fraction thereof by which the amount in the Unemployment Compensation Fund is less than Two Hundred Twenty-five Million Dollars (\$225,000,000) shall be applied to the tax rate of each employer eligible for an experience tax rate, including any employer whose tax rate would otherwise be limited to four percent (4%).

The ceiling for the Unemployment Compensation Fund referred to in the preceding paragraph shall be Three Hundred

Five Million Dollars (\$305,000,000) for the computation date of October 1, 1972, and shall be increased by Five Million Dollars (\$5,000,000) to Three Hundred Ten Million Dollars (\$310,000,000) for the computation date of October 1, 1973, and shall be increased by Five Million Dollars (\$5,000,000) for the computation date of each succeeding year until it reaches Three Hundred Twenty-five Million Dollars (\$325,000,000) for the computation date of October 1, 1976, and it shall remain at Three Hundred Twenty-five Million Dollars (\$325,000,000) for each computation date thereafter.

(7) If an employing unit acquires all or a part of the organization, trade or business of an employer, such acquiring successor employing unit and such predecessor employer may jointly make written application to the Commission for that compensation experience of such predecessor employer which is attributable to the organization, trade or business or the part thereof acquired to be treated as compensation experience of such successor employing unit. The Commission shall approve such application if it finds that: (i) immediately after such acquisition the successor employing unit continued operation of substantially the same organization, trade or business or part thereof acquired; and (ii) the predecessor employer has waived, in writing, all his rights to an experience rating based on the compensation experience attributable to the organization, trade or business or part thereof acquired by the successor employing unit; and (iii) in the event of the acquisition of only a part of a predecessor employer's organization, trade or business, such acquisition was of a part to which a definitely identifiable and segregable part of the predecessor's compensation experience was and is attributable; and (iv) if the successor employing unit was not an employer at the time of the acquisition, such successor has elected to become an employer as of the date of the acquisition or has otherwise become an employer during the year in which the acquisition took place.

If the application for transfer of experience is approved and the successor employing unit was an employer immediately prior to the acquisition, such successor shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor on the date of the acquisition. If such application is approved and the successor employing unit was not an employer immediately prior to the date of the acquisition, such successor shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the highest rate applicable at the time of the acquisition to any predecessor employer who was a party to the acquisition with respect to which the joint application was made.

In the event the acquisition is the result of the death of the predecessor employer, the requirements of this subsection relating to the necessity for the predecessor to join in the application and the requirements of condition (ii) hereof shall not apply.

"Compensation experience," as used in this subsection includes duration of chargeability with benefit wages or benefits as well as all factors mentioned in subsection 7(c) of this Section necessary to the computation of experience rating under subsection 7(c) of this Section.

(d) The computation date for all experience tax rates shall be as of October 1 of the year preceding the calendar year for which such rates are to be effective, and such rates shall be effective on January 1 of the calendar year immediately following such computation date for the entire year; provided that the experience tax rate for each employer who, for the first time, and at the close of any calendar quarter, has completed four (4) full consecutive calendar quarters throughout each month of which the employer was chargeable with benefit payments, shall be computed and determined as of the first day of the calendar quarter next following such close, and such rate shall be effective on the date as of which it was computed, and for the remainder of the calendar year in which such computation date occurs.

(e) The contribution rate of each employer for the calendar years ending on or before December 31, 1968, shall be determined in accordance with the provisions of this Section prior to this amendment; the contribution rate of each employer for each calendar year commencing after December 31, 1968, shall be determined in accordance with the provisions of this Section. Nothing in this Section shall be construed as authorizing or requiring a refund

of any contributions or portions thereof due and paid prior to January 1, 1969, under this Section, or as waiving the right to collect any contributions or portions thereof due and unpaid under this Section on December 31, 1968.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 7; Acts 1937, 45th Leg., p. 121, ch. 67, § 3; Acts 1939, 46th Leg., p. 436, § 4; Acts 1941, 47th Leg., p. 2, ch. 2, § 1; Acts 1941, 47th Leg., p. 101, ch. 83, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, §§ 5, 5A, 5B, 5C, 5D, 5E; Acts 1953, 53rd Leg., p. 47, ch. 38, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 5; Acts 1957, 55th Leg., p. 1350, ch. 460, § 4; Acts 1961, 57th Leg., p. 1129, ch. 513, § 1; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 6; Acts 1967, 30th Leg., p. 685, ch. 287, § 4, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2738, ch. 892, § 5, eff. Jan. 1, 1972; Acts 1971, 62nd Leg., p. 2777, ch. 900, § 2, eff. Jan. 1, 1972.]

1 Article 5221b-17(f)(2).

2 Article 5221b-3(a), (b).

3 Article 5221b-3(a), (b).

4 Article 5221b-3(d).

5 Article 5221b-4(b).

6 Article 5221b-4(h), (i).

7 Article 5221b-4.

#### Art. 5221b-5a. Reimbursements

(a) Reimbursing Employers: Payments in lieu of contributions shall be made in accordance with the provisions of this Section. An employer making payments in accordance with this Section shall be referred to as a "reimbursing employer" and such payments shall be referred to as "reimbursements."

(b) Payments by a Reimbursing Employer: At the end of each calendar quarter the Commission shall bill each reimbursing employer for an amount equal to the amount of the regular benefits plus one-half ( $\frac{1}{2}$ ) of the amount of the extended benefits paid during such quarter which are attributable to service in the employ of such employer, and reimbursements shall be paid by the reimbursing employer to the Commission for the fund in accordance with such rules as the Commission may prescribe.

(c) Allocation of Benefit Costs: Each employer that is liable for reimbursements shall pay to the Commission for the fund the amount of the regular benefits plus the amount of one-half ( $\frac{1}{2}$ ) of the extended benefits paid which are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one (1) or more of such employers are liable for reimbursements, the amount payable to the fund by each such employer that is liable for reimbursements shall be determined in accordance with the provisions of the following subparagraph (1) or subparagraph (2):

(1) Proportionate Allocation (When Fewer Than All Base Period Employers Are Liable for Reimbursements): If benefits paid to an individual are based on wage credits paid by one (1) or more employers who are liable for reimbursements



and on wage credits paid by one (1) or more employers who are liable for contributions, the amount of reimbursement payable by each employer that is liable for reimbursements shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wage credits paid to the individual by such employer bears to the total base period wage credits paid to the individual by all of his base period employers.

(2) Proportionate Allocation (When All Base Period Employers Are Liable for Reimbursement): If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for reimbursements, the amount of reimbursement payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wage credits paid to the individual by such employer bears to the total base period wage credits paid to the individual by all of his base period employers.

(d) Records and Reports: Reimbursing employers shall maintain records and submit reports in accordance with subsection 11(e) of the Act<sup>1</sup> and rules prescribed by the Commission.

(e) Collections: If any reimbursing employer shall fail to pay reimbursements due under this Act on the date on which they are due and payable, as prescribed by the Commission, or if any such employer shall fail to submit records and reports as prescribed by the Commission, such employer shall be subject to the provisions set forth in Section 14 of this Act;<sup>2</sup> provided, that where Section 14 refers to contributions due from employers such Section shall be regarded as also referring to reimbursements due from reimbursing employers.

(f) Waiver of Rights: Reimbursing employers are entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this Act except the provisions of Section 7.<sup>3</sup> Section 7 shall be inapplicable to reimbursing employers (except where specifically mentioned therein) and an election to become a reimbursing employer shall constitute a waiver of the rights afforded under Section 7 of the Act.

(g) Continued Liability: All regular benefits paid and one-half (1/2) of extended benefits paid which are attributable to service in the employ of a reimbursing employer during the period for which he elected reimbursement pursuant to Section 8<sup>4</sup> shall be reimbursed by the employer even though the employer may no longer be a reimbursing employer when the benefit payments are made.

(h) Group Accounts: Two (2) or more reimbursing employers may file a joint application

with the Commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this paragraph. Upon approval of the application, the Commission shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the Commission received the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two (2) years and thereafter until terminated at the discretion of the Commission or upon application by the group, and such termination shall be effective only at the beginning of the next calendar year. Upon establishment of the account, each member of the group shall be liable for reimbursements with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all members of the group. Each member of the group shall keep true and accurate employment records and submit such reports as the Commission may require with respect to persons employed by such member. The Commission shall prescribe such rules as may be necessary with respect to the type of records to be kept by and reports to be submitted by groups of employers, applications for the establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts of reimbursements that are payable under this paragraph by members of the group and the time and manner of such payments.

(i) Authority to Terminate Elections: If any nonprofit organization is delinquent in making reimbursements as provided under this Section, the Commission may terminate such organization's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(j) Bond: In the discretion of the Commission, any nonprofit organization (or group of such organizations) that elects to become liable for reimbursements may be required to execute and file with the Commission a surety bond approved by the Commission. The amount of such bond shall be determined in accordance with rules prescribed by the Commission. The Commission may require adjustments to be made in a previously filed bond if it deems such action appropriate. Failure by any or-

ganization covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties provided for under this Act, shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization. If any nonprofit organization fails to make bond when directed to do so by the Commission, the Commission may terminate such employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(k) **Additional Safeguards:** The Commission is authorized to provide such additional safeguards as may be needed to ensure that reimbursing employers pay the reimbursements required under this Section.

(l) **Benefit Payments:** Benefits based upon wages earned from a reimbursing employer shall be paid from the fund, but such benefits paid and reimbursements for such benefits shall not be used in computing the replenishment ratio provided for in subsection 7(c)(5) of this Act.<sup>5</sup>

[Acts 1971, 62nd Leg., p. 2738, ch. 892, § 6, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-9(e).

<sup>2</sup> Article 5221b-12.

<sup>3</sup> Article 5221b-5.

<sup>4</sup> Article 5221b-6.

<sup>5</sup> Article 5221b-5(c)(5).

#### Art. 5221b-6. Duration of Coverage and Elections

(a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

(b) (1) A nonprofit organization (or group of organizations) as described in Section 501(c)(3) of the Internal Revenue Code of 1954<sup>1</sup> which is exempt from income tax under Section 501(a) of such Code<sup>2</sup> and is subject to this Act may file an election to pay reimbursements as provided in Section 7-A of this Act<sup>3</sup> in lieu of paying contributions as provided in Section 7 of this Act.<sup>4</sup> Such election shall be made within forty-five (45) days after the date notice is mailed to the employer that he is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to this Act and such election shall be for a minimum period of two (2) calendar years and cannot be terminated prior to that time, except as provided in subsections 7-A(i) and 7-A(j) of this Act.<sup>5</sup> An election may be withdrawn by a written application by the employer filed with the Commission not later than thirty (30) days prior to the beginning of the year with respect to which the employer wishes to change his method of payment. Thereafter, there must again be a minimum of two (2) calendar years and a

timely application filed before the method of payment may again be changed.

An election to pay reimbursements in lieu of paying contributions will be terminated at any time coverage is terminated under this Act. An employer whose election has been terminated as the result of termination of coverage shall upon again becoming an employer subject to this Act be given an opportunity to file another election to pay reimbursements in lieu of paying contributions under the same terms and conditions described above.

(2) The State of Texas, a branch or department thereof, or an instrumentality thereof may voluntarily elect (except with respect to a State hospital or a State institution of higher education) coverage as a subject employer for a period of not less than two (2) calendar years and shall for the same period file an election to pay reimbursements for benefits paid as provided in Section 7-A of this Act or to pay contributions as provided in Section 7 of this Act.

(3) A political subdivision of the State of Texas may voluntarily elect coverage for not less than two (2) calendar years and such election may be made with respect to (A) all services performed for the political subdivision, or (B) all services performed for all institutions of higher education and all hospitals operated by the political subdivision, or (C) all services performed for one (1) or more separate parts or divisions of the political subdivision; and, if such election is made, the employer shall pay reimbursements for benefits as provided in Section 7-A of this Act.

(4) All elections under subsections 8(b)(2) and 8(b)(3) of this Act may be terminated after the minimum required period by filing with the Commission a written request for termination not later than thirty (30) days preceding the last day of a calendar year, and such termination shall be effective January 1 of the following year.

(5) Any employing unit other than one to which subsection 8(b)(1), 8(b)(2), or 8(b)(3) of this Act is applicable, not otherwise subject to this Act, may voluntarily elect coverage as an employer subject to this Act for a period of not less than two (2) calendar years and shall with the written approval of such election by the Commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval.

(6) Any employing unit for which services that do not constitute employment as defined in this Act are performed may file with the Commission a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this Act for not less than two (2) calendar years. Upon the written approval of such election by

the Commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval and during the period of the election.

(c)(1) No employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then if such employer files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days within the preceding calendar year, each day being in a different calendar week, during each of which days such employing unit employed one (1) or more individuals in employment subject to this Act and that said employer did not pay any wages in any quarter of the preceding year in the total amount of One Thousand Five Hundred Dollars (\$1,500) or more; provided, that, if the employing unit is an employer subject to this Act under subsection 19(f)(3),<sup>6</sup> the phrase "four (4) or more individuals" shall be substituted for the phrase "one (1) or more individuals" in this subparagraph; and provided further, that this subsection has no applicability to an employer subject to this Act under subsection 19(f)(6).<sup>7</sup>

(2) Regardless of whether or not an application for termination of coverage has been filed, an employing unit shall cease to be an employer subject to this Act as of the first day of January of any year if the Commission finds that the employing unit has not had any individuals in employment on any one (1) or more days within the three (3) immediately preceding consecutive calendar years.

(d) Any employing unit which is or becomes an employer subject to this Act, and which under the provisions of this Section ceases to be an employer subject to this Act, and subsequent to such time again becomes an employer subject to this Act by reason of any of the provisions thereof, shall upon again becoming an employer subject to this Act be considered a new employer without regard to any rights acquired by it during the time that it had theretofore been an employer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 8; Acts 1939, 46th Leg., p. 436, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 4; Acts 1949, 51st Leg., p. 282, ch. 148, § 6; Acts 1955, 54th Leg., p. 399, ch. 116, § 6; Acts 1957, 55th Leg., p. 1350, ch. 460, § 5; Acts 1971, 62nd Leg., p. 2741, ch. 892, § 7, eff. Jan. 1, 1972.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3).

<sup>2</sup> 26 U.S.C.A. § 501(a).

<sup>3</sup> Article 5221b-5a.

<sup>4</sup> Article 5221b-5.

<sup>5</sup> Article 5221b-5a(i), (j).

<sup>6</sup> Article 5221b-17(f)(3).

<sup>7</sup> Article 5221b-17(f)(6).

Art. 5221b-6a. Repealed by Acts 1943, 48th Leg., p. 585, ch. 343, § 8.

#### Art. 5221b-7. Unemployment Compensation Fund

(a) Establishment and Control: There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Fund, which shall be administered by the Commission exclusively for the purposes of this Act.<sup>1</sup> This fund shall consist of

(1) all contributions collected under this Act;

(2) interest earned upon any moneys in the fund;

(3) any property or securities acquired through the use of moneys belonging to the fund;

(4) all earnings of such property or securities; and

(5) all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposits: The State Treasurer shall be treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with such regulations as the Commission shall prescribe. The Treasurer shall maintain within the fund three (3) separate accounts:

(1) a clearing account,

(2) an unemployment trust fund account, and

(3) a benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended,<sup>2</sup> any provisions of the law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. Refunds payable pursuant to Section 14 of this Act<sup>3</sup> may be paid from the clearing account or the benefit account upon warrants issued by the Comptroller under the direction of the Commission, except that refund of penalties which are erroneously collected, and which are to be refunded in accordance with the provisions of Subsection 14(j) of this Act,<sup>4</sup> shall be paid out of the Unemployment Compensation Special Administration Fund. The benefit account shall consist of all moneys requisitioned from this State's account in the Unemployment Trust Fund in the United States Treasury. Except as herein otherwise provided, moneys in

the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. All moneys in this fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable, on his official bond, for the faithful performance of his duties in connection with the Unemployment Compensation Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability on any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

(c) Withdrawals: Moneys requisitioned from this State's account in the Unemployment Trust Fund shall be used exclusively for the payment of benefits and for refunds pursuant to Section 14<sup>5</sup> and this Section, except that money credited to this State's account pursuant to Section 903 of the Social Security Act,<sup>6</sup> as amended, may be requisitioned and used by the Commission only to the extent and under the conditions prescribed by said Section 903, as amended. The Commission shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt thereof, the Treasurer shall deposit such moneys in the benefit account, and the Comptroller shall issue his warrants for payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account, and refunds from the clearing account, shall not be subject to any provision of law which may require itemization or other formal release by State officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the Treasurer and the countersignature of a member of the Commission, or its duly authorized agent, for that purpose. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the Unemployment Trust Fund as provided in subsection (b) of this Section.

(d) If a warrant has been issued by the Comptroller in payment of benefits as provided

under this Act, and if the claimant entitled to receive such warrant has lost or loses, or for any reason failed or fails to receive such warrant after such warrant is or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue to claimant a duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas, 1925, but in no event shall a duplicate warrant be issued after one year from the date of the original warrant.

If, after any warrant has been issued by the Comptroller payable to a claimant for benefits under the provisions of this Act, and such warrant shall have been lost or misplaced, or if claimant for any reason fails or refuses to present said warrant for payment within twelve (12) months after the date of issuance of such warrant, such warrant shall be cancelled, and thereafter no payment shall be made by the Treasurer on such warrant, and no duplicate warrant in place thereof shall ever be issued.

(e) Management of Funds Upon Discontinuance of Unemployment Trust Fund: The provisions of Subsections (a), (b), (c), and (d) to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund, from which no other State is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Fund of this State, shall be transferred to the Treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this Act; provided, that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the Commission.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 9; Acts 1939, 46th Leg., p. 436, § 6; Acts 1941, 47th Leg., p. 261, ch. 178, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 5; Acts 1957, 55th Leg., p. 1350, ch. 460, § 6.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> 42 U.S.C.A. § 1104.

<sup>3</sup> Article 5521b-12.

<sup>4</sup> Article 5221b-12(j).

<sup>5</sup> Article 5221b-12.

<sup>6</sup> 42 U.S.C.A. § 1103.

**Art. 5221b-7a. Transfer of Funds**

Notwithstanding any requirements of this Chapter, the Commission shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act as amended,<sup>1</sup> to the Railroad Unemployment Insurance Account, established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act,<sup>2</sup> an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) January 1, 1940, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in said Unemployment Trust Fund to said Railroad Unemployment Insurance Account an additional amount, hereinafter referred to as the liquidating amount. The Social Security Board shall determine both such amount after consultation with the Commission and the Railroad Retirement Board. The preliminary amount shall consist of that proportion of the balance in the Unemployment Compensation Fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act)<sup>3</sup> and credited to the Unemployment Compensation Fund bears to all contributions theretofore collected under this Act and credited to the Unemployment Compensation Fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this Act during the period July 1, 1939, to December 31, 1939, inclusive.

[Acts 1939, 46th Leg., p. 459, § 2.]

<sup>1</sup> 42 U.S.C.A. § 1104.

<sup>2</sup> 42 U.S.C.A. § 1104; 45 U.S.C.A. § 360.

<sup>3</sup> 45 U.S.C.A. § 351.

**Art. 5221b-7b. Moneys Appropriated to Pay Benefits and Refunds**

It is hereby specifically provided that all moneys now on deposit to the credit of the Unemployment Compensation Fund and any moneys received for the credit of such fund, are hereby appropriated for the payment of benefits and refunds as authorized by the provisions of the Act.<sup>1</sup>

[Acts 1941, 47th Leg., p. 261, ch. 178, § 2.]

<sup>1</sup> Art. 5221b-1 et seq.

**Art. 5221b-8. Texas Employment Commission**

(a) Organization: There is hereby created a Commission to be known as the Texas Unemployment Compensation Commission. The Com-

mission shall consist of three (3) members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. Each of the three (3) members of the Commission shall be appointed by the Governor immediately after the effective date of this Act<sup>1</sup> or after any vacancy occurs in the membership of the Commission. During his term of membership on the Commission, no member shall engage in any other business, vocation or employment. Each member shall hold office for a term of six (6) years, except that

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed<sup>2</sup> for the remainder of such term; and

(2) the terms of office of the members first taking office after the date of enactment of this Act shall expire, as designated by the Governor at the time of appointment, one at the end of two (2) years, one at the end of four (4) years, and one at the end of six (6) years after the date of his appointment.

(b) Chairman: The Chairman of the Texas Unemployment Compensation Commission shall be the impartial member of the Commission, and shall in addition serve as the executive director of all divisions of the Texas Unemployment Compensation Commission.

(c) Employment Service and Advisory Council: The Commission is authorized to operate a public employment service but it is not necessary that same be operated as a separate division of the Commission. The Commission is also authorized to appoint a State Advisory Council composed of persons representing employers, employees and the public. Advisory Council members shall be allowed and paid, as a part of the cost of administering this Act<sup>3</sup> and in accordance with regulations of the Commission, necessary travel and subsistence expenses, in addition to a per diem allowance, in connection with meetings of the Council; but they shall for no purpose be regarded as State employees. The Commission shall fix the composition and establish the duties of the State Advisory Council and may take such action as it deems necessary or suitable to this end. The Commission may likewise appoint and pay local advisory councils and consultants under the same conditions prescribed herein for the State Advisory Council.

(d) Salaries: The salaries of the members of the Texas Employment Commission shall be as specified in the regular departmental appropriation bill.

(e) Quorum: Any two (2) Commissioners shall constitute a quorum. No vacancy shall

impair the right of the remaining Commissioners to exercise all of the powers of the Commission.

(f) Repealed by Acts 1957, 55th Leg., p. 1350, ch. 460, § 12.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 10; Acts 1943, 48th Leg., p. 585, ch. 343, § 6; Acts 1955, 54th Leg., p. 399, ch. 116, § 8; Acts 1957, 55th Leg., p. 1350, ch. 460, § 12.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> The words "shall hold office" or some similar words have probably been omitted.

<sup>3</sup> Article 5221b-1 et seq.

#### Art. 5221b-9. Administration

(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act;<sup>1</sup> and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. As soon after the close of each State fiscal year as is practicable, the Commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding State fiscal year, and the Commission shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules: General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten (10) days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be

adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) Publication: The Commission shall cause to be printed for distribution to the public the text of this Act, the Commission's regulations and general rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel: Subject to other provisions of this Act, the Commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The Commission shall not employ or pay any person who is an officer or committee member of any political party organization. The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Records and Reports: Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe and which is deemed necessary to the proper administration of this Act. Such records shall be open to inspection and subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this Act. Information thus obtained or otherwise secured shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) except as the Commission may deem necessary for the proper administration of this Act. Any employee or member of the Commission who violates any provision of this subsection shall be fined not less than Twenty Dollars (\$20), nor more than Two Hundred Dollars (\$200), or imprisoned for not longer than ninety (90) days, or both.

(f) Oaths and Witnesses: In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act. Notwithstanding the provisions of Article 3912e, Vernon's Texas Civil Statutes, or any other provision of the laws of this state, the fees of sheriffs and constables

for serving such subpoenas shall be paid by the Commission out of administrative funds, and the Comptroller of Public Accounts shall issue warrants for such fees as directed by the Commission.

(g) Subpoenas: In case of contumacy by, or refusal to obey a subpoena issued by a member of the Commission or any duly authorized representative thereof to any person, any County or District Court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the Commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the Commission, shall be punished by a fine of not less than Two Hundred Dollars (\$200), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) Protection Against Self Incrimination: No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission, in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. No statement whether oral or in writing made to the Commission or its employees in connection with the discharge of their duties under this Act shall ever be made the basis for an action for defamation of character.

(i) State-Federal Cooperation: In the administration of this Act, the Commission shall cooperate to the fullest extent consistent with the provisions of this Act, with the Social Security

Board, created by the Social Security Act, approved August 14, 1935, as amended;<sup>2</sup> shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act<sup>3</sup> for the purpose of assisting in the administration of this Act.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11; Acts 1955, 54th Leg., p. 399, ch. 116, § 8; Acts 1957, 55th Leg., p. 1350, ch. 460, § 7; Acts 1965, 59th Leg., p. 318, ch. 150, § 1, eff. July 1, 1965.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> 42 U.S.C.A. §§ 301 to 1305.

<sup>3</sup> 42 U.S.C.A. §§ 501 to 503.

#### Art. 5221b-9a. Use of Records

The Commission may make the State's records relating to the administration of this Act<sup>1</sup> available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such Board, such copies thereof as the Railroad Retirement Board deems necessary for his purposes.

The Commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

[Acts 1939, 46th Leg., p. 459, § 3.]

<sup>1</sup> Article 5221b-1 et seq.

#### Art. 5221b-9b. Destruction of Records

The Commission may destroy any of its records, under such safeguards as will protect the confidential nature of such records, when it determines that such records no longer serve any legal, administrative, or other useful purpose. The Commission may likewise destroy its records at any time after it has made authentic photographs, calligraphs, microfilms, or other similar reproductions of such records.

[Acts 1941, 47th Leg., p. 261, ch. 178, § 3; Acts 1955, 54th Leg., p. 399, ch. 116, § 9.]

#### Art. 5221b-10. Employment Service

(a) Texas State Employment Service, as provided for under Act of the Forty-fourth Legislature, Regular Session, Chapter 236, page 552,<sup>1</sup> is hereby transferred to the Commission as a division thereof. The Commission, through such division, shall establish and maintain free public employment offices in

such number and in such places as may be necessary for the proper administration of this Act,<sup>2</sup> and for purposes of performing such duties, as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., Title 29, Section 49(c)) as amended.<sup>3</sup> It shall be the duty of the Commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State in conformity with Section 4 of said Act,<sup>4</sup> and this State will observe and comply with the requirements thereof. The Texas Unemployment Compensation Commission is hereby designated and constituted the agency of this State for the purposes of said Act. The Director, other officers and employees of the Texas State Employment Service shall be appointed by the Commission in accordance with regulations prescribed by the Director of the United States Employment Service.

(b) Financing: All monies received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said monies are hereby made available to the Texas Unemployment Compensation Commission to be expended as provided by this Section and by said Act of Congress, and any unexpended balance of funds appropriated or allocated either by the State of Texas or the Federal Government to the Texas State Employment Service as a division of the Bureau of Labor Statistics, is hereby, upon the passage of this Act, transferred to the special "Employment Service Account" in the Unemployment Compensation Administration Fund. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivision of this State or with any private, and/or non-profit organization, and as a part of any such agreement the Commission may accept monies, services, or quarters as a contribution to the special "Employment Service Account."

(c) Invalidity of Transfer: In the event that this Act, or any section thereof, in so far as the same shall affect the Texas State Employment Service, shall be held or declared unconstitutional or invalid, then in that event Chapter 236, page 552, Acts of the Regular Session of the Forty-fourth Legislature establishing the Texas State Employment Service shall be and remain in full force and effect as it was prior to the passage of this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 12; Acts 1937, 45th Leg., p. 121, ch. 67, § 4.]

<sup>1</sup> Article 5521a-2.

<sup>2</sup> Article 5221b-1 et seq.

<sup>3</sup> 29 U.S.C.A. §§ 49 to 497.

<sup>4</sup> 29 U.S.C.A. § 49c.

#### Art. 5221b-11. Unemployment Compensation Administration Fund

(a) Special Fund: There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act,<sup>1</sup> and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the Federal Government or any agency thereof shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successor for the proper and efficient administration of this Act. The fund shall consist of all moneys appropriated by this State; all moneys received from the United States of America, or any agency thereof; all moneys received from any other source for such purpose; all moneys collected by the Commission as costs or fees charged by the Commission for furnishing photostatic or certified copies of records of the Commission, or fees charged by the Commission for making audits pursuant to the authority granted in this Act, and shall also include any moneys received from any agency of the United States of America or any other State as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Unemployment Compensation Administration Fund, or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of such equipment or supplies which may no longer be necessary for the proper administration of this Act. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Administration Fund shall be deposited in said fund.

(b) The Commission is authorized to furnish to any person entitled thereto upon application



therefor photostatic or certified copies of any records in its possession, the publication of which is not prohibited by this Act, and the Commission shall charge therefor a reasonable fee to be set by the Commission.

(c) Reimbursement of Fund: If any moneys received after June 30, 1941, from the Social Security Board or successor under Title III of the Social Security Act,<sup>2</sup> or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, or any other Federal Moneys granted to the Employment Commission for the administration of this Act, are found by the Social Security Board or successor because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board or successor for the proper administration of this Act, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Unemployment Compensation Administration Fund for expenditure as provided in subsection (a) of this Section. Upon receipt of notice of such a finding by the Social Security Board or successor the Commission shall promptly report the amount required for such reimbursement to the Governor and the Governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 13; Acts 1937, 45th Leg., p. 121, ch. 67, § 5; Acts 1939, 46th Leg., p. 436, § 7; Acts 1941, 47th Leg., p. 594, ch. 364, § 1; Acts 1949, 51st Leg., p. 282, ch. 148, § 7.]

<sup>1</sup> Article 5521b-1 et seq.  
<sup>2</sup> 42 U.S.C.A. §§ 501 to 503.

#### Art. 5221b-12. Collection of Contributions

(a) Interest and Penalties on Past Due Contributions: If any employer subject to the provisions of this Act shall fail to pay contributions due under this Act on the date on which they are due and payable as prescribed by the Commission, such employer shall forfeit to the State of Texas a penalty of one per cent (1%) of such contributions, and after the expiration of one (1) month such employer shall forfeit an additional penalty of one per cent (1%) of such contributions for each month or fraction thereof, until such contributions and penalties shall have been paid in full; provided, however, that the penalties applicable to the contributions due for any period (as prescribed by the rules of the Commission) shall not exceed twenty-five per cent (25%) of the amount of contributions due at due date; provided, however, that for the exclusive purpose of this subsection, after July 1, 1965, the forfeit of penalty provided herein shall not apply to any employer who failed to pay contributions due under this Act because of the bona fide belief that all or some of their employees are covered under the unemployment insurance law of any other state if such employer paid, pursuant to the unemployment insurance law of such other state, the contributions thereunder when due on all such wages of such employees.

In addition to the penalties provided above, whenever the maximum penalty of twenty-five per cent (25%) shall accrue or shall have accrued as provided above in cases in which the liability of the employer is reduced to judgment, thereafter in addition to the penalties provided above, contributions included in such judgment shall bear interest at the rate of one-half of one per cent ( $\frac{1}{2}$  of 1%) per month or part of a month.

(b) Collections: If, after notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due shall be collected by civil action in a District Court in Travis County, Texas, in the name of the State and the Attorney General, and the employer adjudged in default shall pay the costs of such action; provided, however, that no court action shall be begun to collect contributions or penalties from an employer after the expiration of three (3) years from the due date of such contributions, except that, in any case of a willful attempt in any manner to evade any of the provisions of the Unemployment Compensation Law or Commission rules or regulations promulgated thereunder, such action may be begun at any time.

An employer liable for contributions, penalties, or interest under this Act who fails to pay such sums when due shall, after judgment has been entered therefor and execution returned unsatisfied, forfeit his right to employ individuals in this State until he enters into a bond with sureties to be approved by the Commission, in an amount not to exceed double the sum then due plus contributions estimated by the Commission to become due by said employer during the next calendar year, said bond to be conditioned upon payment of all contributions, penalties, interest, and court costs due and owing by the employer within thirty (30) days after the expiration of the next ensuing calendar year, and in the event the employer fails to furnish such bond or pay the taxes, interest, and penalty then found to be due, the Commission may proceed by injunction to prevent the continuance of such employment upon such failure by the employer by applying to the court which previously entered judgment against the employer for contributions, penalties, or interest, and a temporary injunction enjoining the employer from employing persons in this State without first posting bond as aforesaid may be granted after reasonable notice of not less than ten (10) days by said court; and such temporary injunction may upon final hearing be made permanent and shall remain in full force and effect until the requirements of this Section have been fully satisfied.

(c) (1) If any employer shall fail to file any reports of wages paid or contributions due as required by this Act or by the rules or regulations of the Commission, such employer shall forfeit to the State for the Unemployment

Compensation Special Administration Fund as penalties:

(i) for the first fifteen days or part thereof of violation, the sum of Five Dollars (\$5); and

(ii) for the remainder of the month or part thereof of violation, the sum of Five Dollars (\$5) plus  $\frac{1}{10}$ th of 1% of wages paid which the employer failed to report when due to the Commission; and

(iii) for the second successive month or part thereof of violation, an additional Ten Dollars (\$10) plus  $\frac{1}{10}$ th of 1% of wages paid which the employer failed to report when due to the Commission; and

(iiii) for the third successive month, or part thereof of violation, an additional Ten Dollars (\$10) plus  $\frac{1}{5}$ th of 1% of wages which the employer failed to report when due to the Commission.

The penalties hereinbefore provided in (i), (ii), (iii), and (iiii) are cumulative and in addition to any other penalties provided in this Act, and if such penalties are not paid to the Commission at the time they are forfeited, they shall be collected by civil action as provided in this Section.

(2) If any employing unit shall

(i) fail to keep any of the records required to be kept by the provisions of this Act or by the rules or regulations of the Commission,

(ii) make a false report to the Commission, or

(iii) fail or refuse to abide by the provisions of this Act, or the rules or regulations of the Commission promulgated hereunder, or violate the same, and if no civil penalty is otherwise provided by this Act, such employing unit shall forfeit to the State for the Unemployment Compensation Special Administration Fund as a penalty the sum of Ten Dollars (\$10).

In cases where the violation is of continuous and continuing nature, whether or not any other civil penalty is otherwise provided by this Act, each day's violation after written notice of the existence of the violation is given to the employing unit shall constitute a separate offense and incur another penalty of Ten Dollars (\$10). The penalty for each day's violation shall be forfeited and become cumulative on the tenth (10th) calendar day after date of written notice is given or mailed to the employing unit by the Commission or its authorized representative. If such penalties are not paid when demanded by the Commission or its duly authorized representative, they shall be collected by civil action as provided in this Section.

(3) If any employer shall fail to make any reports to the Commission, required by this Act or by rules or regulations of the Commission, the Commission may estimate, from any sources of information available to it, the amount of taxable wages paid by such employ-

er during the period in question, and the Commission may proceed to collect taxes and penalties on the basis of such estimates the same as if the estimated wages had been properly reported by the employer.

(4) The collection remedies provided in this Section shall be cumulative and no action shall be construed as an election on the part of the Commission to pursue any given remedy or action hereunder to the exclusion of any other remedy or action for which provision is made in this Act or in the General Laws of the State of Texas.

(d) If any employer fails or refuses to pay any contributions, penalties or interest within the time and manner provided by this Act, or by the rules or regulations adopted by the Commission hereunder, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the offices of the Texas Employment Commission by such employer or his agents or representatives, or a certified copy thereof certified to by the Chairman or any member of said Commission or any employee designated for the purpose by said Commission, showing the amount of wages paid by such employer or his agents or representatives, with respect to which contributions, penalties or interest have not been paid, or any audit made by the Texas Employment Commission or its representatives from the books of such employer when signed and sworn to by such representative as being made from the records of said employer, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(e) When an action is filed under the terms of subsection (b) of this Section 14 and is supported by a statement, report or audit, and the affidavit of a member of the Commission, a representative of the Commission, or the attorney representing the Commission, taken before some officer authorized to administer oaths, to the effect that the contributions, penalties or interest shown to be due by said statement, report, or audit are, within the knowledge of affiant, past due and unpaid and that all just and lawful offsets, payments, and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the defendant in said action shall, before an announcement of ready for trial, file a written denial, under oath, stating that such contributions, penalties or interest are not due, in whole or in part, stating the particulars as to any part of said contributions, penalties or interest claimed to be not due; provided that when such counter-affidavit shall be filed on the day of the trial, the plaintiff shall have the right to postpone such cause for a reasonable time. When the defendant fails to file such affidavit, he shall not be permitted to deny the claim for contri-

butions, penalties or interest, or any item thereof.

(f) All sums due by any employing unit under this Act shall become a lien upon all the property both real and personal belonging to such employing unit or to any individual so indebted. Such lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent and may be recorded in the "State Tax Liens" book kept by county clerks as provided in Article 1.07A of Title 122A, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and such liens may be released in the manner there provided for other state tax liens. The Commission shall pay by warrant drawn by the State Comptroller to the county clerk of the county in which a notice of lien provided by this subsection has been filed the usual fee for filing and recording other similar instruments. Such fee shall be added to the amount due from the employer. When the liability secured by the lien is fully paid, the Commission shall mail to the employer a release of the said lien and it shall be the employer's responsibility to file such release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

(g) If any employer shall fail to remit proper contributions when due, or if any employer shall fail to make such reports to the Commission as are required by this Act, or, as are required by the regulations adopted by the Commission pursuant to authority granted in this Act, the Commission may employ auditors or other persons to ascertain the correct amount of contributions due and to prepare the correct reports due, and if such contributions have not been properly remitted, or, if such reports have not been properly made, the employer shall pay the reasonable expenses incurred in such investigation which shall be paid as additional penalty, and such additional penalty may be collected by the Commission in the manner prescribed in this Section; provided that nothing herein shall prevent the Commission from using other funds available to it for the purpose of making audits and preparing or assisting in preparing reports of employers when the Commission determines that such action is necessary.

(h) Whenever any suit shall be instituted on behalf of the Commission, or at the request of the Commission under this Section or under Section 17 of this Act,<sup>2</sup> the costs adjudged against the State or the Commission shall be paid by the Commission out of the administrative fund herein provided for. All such costs as are chargeable against the Commission shall be paid by the Commission to the officers of the Courts of Texas at the time that the same become due under the provisions of the General Laws of this State.

(i) Priorities under legal dissolutions or distributions: In the event of any distribution of an employer's assets pursuant to an order of any Court under the laws of this State, includ-

ing any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions then or thereafter due shall be entitled to the same priority as is now accorded by the General Laws of the State of Texas to other tax claims.

(j) (1) Where any employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due, and it is later determined that such contributions and/or penalties were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof because such adjustment cannot be made. If the Commission shall determine that such contributions or penalties, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit. If such adjustment cannot be made, the Commission shall refund said amount without interest from the fund. It is provided, however, that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within three (3) years from the date on which such contributions and/or penalties would have become due, had such contributions and/or penalties been legally collectible by the Commission from such employing unit, and provided further that with respect to applications for refund or adjustment filed on or after January 1, 1956, if the approval of such application and the making of a refund or adjustment in connection therewith would require the deletion, removal, or disregarding of any benefit wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions and/or penalties, no such application for adjustment or refund shall ever be considered by the Commission. The deletion, removal, or disregarding of benefit wages referred to herein shall not include the transfer of compensation experience as described in subsection 7(c)(7) of this Act.<sup>3</sup> For like cause, and within the same period, adjustments or refunds without interest may be so made on the Commission's own initiative.

(2) When an employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due and has, within three (3) years from the date on which such contributions and/or penalties would have become due had such contributions and/or penalties been legally collectible by the Commission from such employing unit, made application to the Commission for a refund or adjustment thereof, and such application for refund or adjustment has been denied by the Commission, such employing unit may, within one (1) year from the date on which notice of such denial was mailed to it, commence an action in

any court of competent jurisdiction in Travis County, Texas, against the Commission for a refund of the contributions and/or penalties which the Commission refused to refund; provided, however, that such action may not be based upon an application for a refund or adjustment of contributions and/or penalties, or upon the denial of such an application, which application involved the consideration of wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions. The action herein provided shall be exclusive and no action shall be brought under any other provision of law for such refund. Such action shall be de novo; and such recovery, if any, shall be without interest.

(k) Whenever it shall appear that any individual or employing unit is violating or threatening to violate any of the provisions of this Act, or of any rule, regulation or order of the Commission promulgated under this Act, relative to the collection of contributions, penalties, or interest, or the filing of reports relative to employment, the Commission, through the Attorney General, shall bring suit, in the name of the State of Texas against such employing unit or individual in any Court of competent jurisdiction in the county of the residence of the defendant, or if there be more than one (1) defendant, in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person or employing unit from violating such statute, or such rules, regulation or order of the Commission or any part thereof, and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person or employing unit of any injunction granted under the provisions of this Act shall be sufficient grounds for the appointment by the Court, either upon its own motion or that of the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person or employing unit and to exercise such powers as in judgment of the Court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt.

(l) Taxes, penalties, interest and court costs owed by an employer under a final court judgment under this Act shall be deemed to be a debt owed to the State of Texas by the employer for the purposes of Article 4350, Vernon's Texas Civil Statutes, provided, however, that this subsection shall apply only to warrants which would otherwise be issued by the State

Comptroller in refund of taxes, fees, assessments and other deposits required under the laws of Texas and to warrants otherwise owed to the employer as compensation for goods and services (other than warrants owed in payment for services performed as an elective or appointive employee of this state and warrants owed in reimbursement of expenses incurred in the performance of such state employment).

(m) Any qualified attorney who is a regular salaried employee of the Commission may represent any employment security agency of any other state in proceedings in court in this state to collect contributions, penalties, interest, and court costs for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of any other state, provided that such liability has been reduced to judgment in a court of record in the state of the requesting agency, and provided further, that the unemployment compensation law or unemployment insurance law of the requesting state provides for like action on behalf of the Commission by the requesting state agency. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this Act.

(n) In cases where it has become necessary for the Commission to reduce to judgment its claim against an employer for taxes, penalty or interest, the Commission shall pay by warrant drawn by the State Comptroller to the county clerk of the county or counties in which an abstract of such judgment shall be recorded the usual fee for filing and recording such abstract of judgment. When the liability secured by the lien is fully paid, the Commission shall mail to the employer a release of said lien and it shall be the employer's responsibility to file such release with the appropriate county clerk and to pay the county clerk's fees for recording such release.

(o) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act and was indebted to the Commission for taxes, penalty, or interest shall be liable to the Commission for prompt payment of such taxes, penalty, or interest and if not paid, suit may be brought by the Commission for the collection of same as though the taxes, penalty, or interest had been incurred by the successor employer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 14; Acts 1939, 46th Leg., p. 436, § 8; Acts 1943, 48th Leg., p. 572, ch. 339, § 1; Acts 1947, 50th Leg., p. 766, ch. 379, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 10; Acts 1957, 55th Leg., p. 1350, ch. 460, § 8; Acts 1965, 59th Leg., p. 318, ch. 150, §§ 2 to 4, eff. July 1, 1965; Acts 1967, 60th Leg., p. 683, ch. 287, §§ 5 and 6, eff. Oct. 1, 1967.]

<sup>1</sup> See Taxation—General, Art. 1.07A.

<sup>2</sup> Article 5221b-15.

<sup>3</sup> Article 5221b-5(c)(7).

Effective date, repeals, etc. Section 2 of the amendatory Act of 1943 read as follows: "The provisions of this Act shall repeal all parts of Section 14 of Chapter 482, Acts of the 44th Legislature, Third Called Session, as

amended, in conflict herewith, and all laws or parts of laws in conflict herewith, insofar as they do conflict herewith, but shall in no way be construed as forfeiting or waiving rights to collect contributions that have accrued under said Chapter 482, as amended, or penalties, not exceeding twenty-five (25%) per centum of the amount of contributions due at due date, that have accrued under said Chapter 482, as amended, nor the right of prosecution for violating any provision thereof".

Sections 3 and 4 of the amendatory Act of 1947 read as follows:

"Sec. 3. All laws or parts of laws in conflict herewith, in so far as they do conflict herewith, are hereby repealed, but such repeals shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Unemployment Compensation Commission which have accrued under the repealed sections of law, including, without limiting or without being limited thereto, the right to collect contributions, interest or penalties that have accrued, and the right of prosecution for any violation thereof.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have enacted such remaining portions despite such invalidity."

#### Art. 5221b-13. Protection of Rights and Benefits

(a) Waiver of Rights Void: No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be valid, except that an employer's waiver under the terms of subsections 7(c)(7)<sup>1</sup> or 7-A(f)<sup>2</sup> of this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions or reimbursements, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions or reimbursements required from him or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or be imprisoned for not more than six (6) months, or both.

(b) Limitation of Fees: No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall for each such offense, be fined not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, or imprisoned for not more than six (6) months, or both.

(c) No Assignment of Benefits; Exemptions: No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any

other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 15; Acts 1955, 54th Leg., p. 399, ch. 116, § 11; Acts 1971, 62nd Leg., p. 2743, ch. 892, § 8, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-5(c)(7).

<sup>2</sup> Article 5221b-5a(f).

#### Art. 5221b-14. Penalties

(a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act or under the unemployment compensation law of any other state, or under any Act or Program of the United States administered by the Commission, either for himself or for any other person, shall be punished by fine of not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500), or by imprisonment for not less than thirty (30) days nor longer than one (1) year, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this Act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment

for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commission for the Unemployment Compensation Fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14(b) of this Act<sup>1</sup> for the collection of past due contributions.

(e) Any person who by willful nondisclosure or misrepresentation by him, or by another for him, of a material fact, has received any sum as benefits under this Act while any conditions for receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, forfeits such benefits and the rights to benefits which remain in the benefit year in which such nondisclosure or misrepresentation occurred. The Commission may to the same extent cancel such benefit rights of any person who has attempted by such willful nondisclosure or misrepresentation to obtain or increase benefits. Such forfeiture or cancellation may be effective only after opportunity for fair hearing before the Commission or its duly designated representative has been afforded such person.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 16; Acts 1939, 46th Leg., p. 436, § 9; Acts 1955, 54th Leg., p. 399, ch. 116, § 12; Acts 1957, 55th Leg., p. 1350, ch. 460, § 9; Acts 1961, 57th Leg., p. 905, ch. 403, § 1; Acts 1971, 62nd Leg., p. 2783, ch. 900, § 3, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-12(b).

#### Art. 5221b-15. Representation in Court

(a) In any civil action to enforce the provisions of this Act the Commission and the State shall be represented by an Assistant Attorney General who shall be appointed by the Attorney General and designated to perform such legal duties as may be required of him by the Commission, and who shall institute in the name of the State and in the name of the Attorney General any civil action requested of him by the Commission. Such Assistant Attorney General shall be paid by the Unemployment Compensation Commission for the services performed by such Assistant Attorney General solely for the Commission. Such Assistant Attorney General may be assisted by any other qualified attorneys who are regularly employed by the Commission.

(b) All criminal actions for violations of any provisions of this Act, or of any rules or

regulations issued pursuant thereto, shall be prosecuted by the prosecuting attorney in the county in which the offense is alleged to have occurred.

(c) In all civil and criminal proceedings brought under provisions of this Act, duly certified copies of documents from Commission files and Commission records shall be accepted in evidence in lieu of the originals thereof.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 17; Acts 1957, 55th Leg., p. 1350, ch. 460, § 10; Acts 1965, 59th Leg., p. 318, ch. 150, § 5, eff. July 1, 1965.]

#### Art. 5221b-15a. Reciprocal Arrangements

(a) The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other States or of the Federal Government whereby individuals performing services in this and other States for a single employing unit shall be deemed to be engaged in employment performed entirely within either:

(1) This State or within one of such other States where some portion of his services are performed, or

(2) The State in which such individual has his residence, or

(3) The State in which the employing unit maintains a place of business.

(b) The Commission shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this Act with his wages and employment covered under the unemployment compensation laws of other states or the Federal Government, or both, which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for:

(1) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws, and

(2) Avoiding the duplicate use of wages and employment by reason of such combining.

(c) The Commission is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to Subsection (b) of this Section. Reimbursements paid from the fund pursuant to this subsection shall be deemed to be benefits for the purposes of this Act.

(d) The Commission is also authorized to enter into reciprocal arrangements with appropriate duly authorized agencies of other states or of the Federal Government, or both, whereby services on vessels or on aircraft engaged in interstate or foreign commerce for a single employer, wherever they are performed, shall be

deemed performed within this State or within any such other state.

[Acts 1937, 45th Leg., p. 121, ch. 67, § 6; Acts 1945, 49th Leg., p. 121, ch. 67, § 6; Acts 1967, 60th Leg., p. 633, ch. 287, § 7, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2743, ch. 892, § 9, eff. Jan. 1, 1972.]

#### Art. 5221b-16. Nonliability of State

Benefits shall be deemed to be due and payable under this Act only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 18.]

#### Art. 5221b-17. Definitions

As used in this Act, unless the context clearly requires otherwise:

(a) (1) "Act" means the Texas Unemployment Compensation Act which is Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended.

(2) "Base period" means such period of four (4) consecutive completed calendar quarters within the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year as the Commission may by regulation prescribe.

(3) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe.

(b) (1) "Benefits" means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(2) "Benefit amount" means the amount of benefits an individual would be entitled to receive for one benefit period of total unemployment.

(3) "Benefit period" means such period of seven (7) consecutive calendar days as the Commission may by regulation prescribe.

(4) "Benefit Year," with respect to any individual means the period of one (1) year beginning with the day with respect to which his first valid initial claim is filed and, thereafter, the period of one (1) year beginning with the day with respect to which his next valid initial claim is filed after the termination of his last preceding benefit year.

(c) "Commission" means the Texas Employment Commission.

(d) "Contributions" means the money payments (taxes) to the State Unemployment Compensation Fund required under Section 7 of this Act.<sup>1</sup> Employers who

pay contributions under this Act may be referred to as "taxed employers."

(e) "Employing unit" means any individual or type of organization, including but not limited to any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or, subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two (2) or more separate establishments within this State shall be deemed to be employed by a single employing unit for all purposes of this Act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) below is applicable, which during any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars (\$1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954<sup>2</sup> which is exempt from income tax under Section 501(a) of such Code<sup>3</sup> and which on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act;<sup>4</sup>

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act<sup>5</sup> for the current calendar year;

(6) A hospital or an institution of higher education (or a group of such organizations) located in this State and operated by this State or by this State and one (1) or more other states or by an instrumentality thereof for which services are performed which constitute employment; provided, that any such hospital or institution shall be a reimbursing employer under the provisions of Section 7-A of this Act;<sup>6</sup>

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act.

(g) (1) "Employment" means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact. The term "employment" shall include but shall not be limited to:

(A) The services of any individual who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his principal; and

(B) The services of a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis on the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

(C) Paragraphs (A) and (B) above are applicable if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that services of an individual shall not

be included in the term "employment" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(2) (A) The term "employment" shall include an individual's entire service performed within or both within and without this State, if the service is localized in this State; or if the service is not localized in any state but some of the service is performed in this State and (i) the base of operations is in this State, or, if there is no base of operations then the place from which such service is directed or controlled is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State.

(B) The term "employment" shall include an individual's entire service within the United States, even though performed entirely outside this State, if (i) the service is not localized in any state, and (ii) he is one of a class of employees who are required to travel outside this State in performance of their duties, and (iii) his base of operations is in this State, or, if there is no base of operations then the place from which his service is directed or controlled is in this State.

(3) (A) Service not covered under paragraph (2) of this subsection and performed entirely without this State, and to which paragraph 3(c), below, is not applicable, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(B) Services covered by reciprocal agreements authorized by this Act between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment, if the Commission has approved an election of the employing unit for whom such services were performed



pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment subject to this Act.

(C) The term "employment" shall include any service performed on or in connection with an American vessel or American aircraft which is defined as employment in Section 3306(c) of the Internal Revenue Code of 1954<sup>7</sup> and which is not excepted from the definition of employment in Section 3306(c)(4) of such Code<sup>8</sup> provided the operating office from which such vessel or aircraft is ordinarily and regularly supervised, managed, directed and controlled is within this State.

(D) The term "employment" shall include any service (other than service which is deemed "employment" under the provisions of subsections (g)(2) and (g)(3) of this Section or the parallel provisions of another state's law) performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer, if:

(i) the employer's principal place of business in the United States is located in this State; or

(ii) the employer has no place of business in the United States, but:

(I) the employer is an individual who is a resident of this State; or

(II) the employer is a corporation which is organized under the laws of this State; or

(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one (1) other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

(E) The term "American employer" as used in subsection 19(g)(3)(D) of this Act<sup>9</sup> means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership, if two-thirds ( $\frac{2}{3}$ ) or more of the partners are residents of the United States;

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(F) The term "United States" as used in subsection 19(g)(3)(D) of this Act includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(G) In the event Texas is the state of jurisdiction for services covered under subsection 19(g)(3)(D) of this Act, said employer shall so notify all employees whose service is defined as "employment" in this subparagraph.

(4) Service shall be deemed to be localized within a state, if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its

tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j),<sup>10</sup> or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half ( $\frac{1}{2}$ ) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half ( $\frac{1}{2}$ ) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son,

daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Service performed in the employ of this State or of any other state, or of any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by this State or by one (1) or more states or political subdivisions; and any service performed in the employ of any instrumentality of this State or of one (1) or more states or political subdivisions to the extent that the instrumentality is with respect to such service, exempt under the Constitution of the United States from the tax imposed by Section 3301 of the Internal Revenue Code of 1954<sup>11</sup> provided that effective January 1, 1972, this exclusion from the definition of employment is not applicable to services performed in the employ of a State or instrumentality thereof for a State hospital or State institution of higher education;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a non-diplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed

as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954,<sup>12</sup> the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act<sup>13</sup> with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of

his ministry or by a member of a religious order in the exercise of duties required by such order;

(O) Service performed in the employ of a nonprofit, religious, or State school which is not an institution of higher education;

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed in the employ of a hospital in a State prison or other State correctional institution, by an inmate of the prison or correctional institution;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers; and

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(6) Included and Excluded Service: If the services performed during one-half ( $\frac{1}{2}$ ) or more of any pay period by an individual

for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half ( $\frac{1}{2}$ ) of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to services performed in any pay period by an individual for the person employing him, where any of such service is excepted by subsection 19(g)(5)(A) of this Act.<sup>14</sup>

(h) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a state-controlled system of public employment offices.

(i) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

(j) "Partial unemployment": An individual shall be deemed "partially unemployed" in any benefit period of less than full-time work if his wages payable for such benefit period are less than the benefit amount he would be entitled to receive if he had performed no services during such period and if with respect to such benefit period no wages were payable to him, plus (i) Five Dollars (\$5), or plus (ii) twenty-five per cent (25%) of such benefit amount, whichever of (i) or (ii) is greater.

(k) "State" includes, in addition to the States of the United States of America, Puerto Rico and the District of Columbia.

(l) "Total unemployment": An individual shall be deemed "totally unemployed" in any benefit period during which he performs no services and with respect to which no wages are payable to him. An individual's benefit period of total unemployment shall be deemed to commence only after his registration pursuant to subsection 4(a) of this Act.<sup>15</sup> As used in this subsection (l), the term "wages" shall include only that part of remuneration for work which is in excess of (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater, in any one benefit period, and the term "services" shall not include work for which remuneration does not exceed (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater.

(m) "Valid claim" means either an initial claim filed by an unemployed individual who has received the wages necessary to qualify for benefits under the terms of subsection 4(e) of this Act,<sup>16</sup> or a claim for benefits filed by an unemployed individual who has received the wages necessary to qualify for benefits under the terms of subsection 4(e) of this Act and "initial claim" means the notice filed by an individual who does not have a current benefit year that he is unemployed and may, if such unemployment continues, file a claim for benefits.

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include:

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to Four Thousand Two Hundred Dollars (\$4,200) with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during any such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in

which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954<sup>17</sup> which is exempt from tax under Section 501(a) of said Code<sup>18</sup> at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954<sup>19</sup>, or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954;<sup>20</sup>

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954<sup>21</sup> (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after Four Thousand Two Hundred Dollars (\$4,200) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment.

(o) "Week" means such period of seven (7) consecutive calendar days as the Commission may prescribe.

(p) "Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this Section.

(q) "Hospital" means any establishment or facility located in this State and operated by this State or by this State and one (1) or more other states or by an instrumentality or political subdivision thereof, offering services and beds for use beyond twenty-four (24) hours for two (2) or more nonrelated individuals requiring diagnosis, treatment or care for illness, whether mental or physical, injury, deformity, abnormality, or pregnancy, and regularly maintaining clinical laboratory services, diagnostic X-ray services, or other treatment facilities.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 19; Acts 1937, 45th Leg., p. 121, ch. 67, § 7; Acts 1939, 46th Leg., p. 436, § 10; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 7; Acts 1945, 49th Leg., p. 589, ch. 347, § 7; Acts 1949, 51st Leg., p. 282, ch. 148, § 8; Acts 1955, 54th Leg., p. 399, ch. 116, § 13; Acts 1957, 55th Leg., p. 1350, ch. 460, § 11; Acts 1961, 57th Leg., p. 1129, ch. 513, § 2; Acts 1965, 59th Leg., p. 318, ch. 150, § 6; Acts 1967, 60th Leg., p. 697, ch. 287, § 8, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2743, ch. 892, §§ 10, 11, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-5.

<sup>2</sup> 26 U.S.C.A. § 501(c)(3).

<sup>3</sup> 26 U.S.C.A. § 501(a).

<sup>4</sup> Article 5221b-6.

<sup>5</sup> 26 U.S.C.A. § 3301 et seq.

<sup>6</sup> Article 5221b-5a.

<sup>7</sup> 26 U.S.C.A. § 3306(c).

<sup>8</sup> 26 U.S.C.A. § 3306(c)(4).

<sup>9</sup> Subsection (g)(3)(D) of this article.

<sup>10</sup> 12 U.S.C.A. § 1141j, subsec. (g).

<sup>11</sup> 26 U.S.C.A. § 3301.

<sup>12</sup> 26 U.S.C.A. § 1603(c).

<sup>13</sup> Article 5221b-12(j).

<sup>14</sup> Subsection (g)(5)(A) of this article.

<sup>15</sup> Article 5221b-2(a).

<sup>16</sup> Article 5221b-2(e).

<sup>17</sup> 26 U.S.C.A. § 401(a).

<sup>18</sup> 26 U.S.C.A. § 501(a).

<sup>19</sup> 26 U.S.C.A. § 403(a).

<sup>20</sup> 26 U.S.C.A. § 405(a).

<sup>21</sup> 26 U.S.C.A. § 3101.

#### Art. 5221b-17a. Repeal; Saving Clause

The provisions of this Act shall repeal all parts of Chapter 482, General Laws of the Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General Laws of the Forty-fifth Legislature, Regular Session,<sup>1</sup> in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be

construed as forfeiting or waiving rights to collect contributions, interest, or penalties that have accrued under said Chapter, nor the right of prosecution for violating any provision thereof; provided, that any individual becoming unemployed and otherwise eligible during a benefit year established subsequent to April 1, 1938, and prior to the effective date of this Act, shall be paid during such benefit year only those benefits established by his most recent determination applicable to such benefit year and prior to the effective date of this Act, except that the Commission may determine the method of making such payments in accordance with the other provisions of this Act.

[Acts 1939, 46th Leg., p. 436, § 12.]

<sup>1</sup> Articles 5221b-1 to 5221b-22b.

**Art. 5221b-18. Repealed by Acts 1957, 55th Leg., p. 1350, ch. 460, § 13**

**Art. 5221b-19. Repeal or Amendment**

Saving Clause: The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this Act at any time.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 21.]

**Art. 5221b-20. Partial Invalidity; Separability of Provisions**

(a) If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

(b) In the event that the provisions of this Act which impose a compulsory contribution be declared invalid or void for any reason, the remainder of the Act shall nevertheless remain in full force and effect; and it is declared to be the intention of the Legislature that the remainder of the Act would have been enacted without the provisions imposing contributions. It is further enacted that in the event the provisions of this Act which impose contributions, are held invalid or void, all payments which have been voluntarily made under the provisions of the Act shall be and remain the property of the fund to which they are deposited; and that employers shall have the right to continue to make voluntary contributions for unemployment insurance under this Act.

(c) In the event it shall be determined and held by the courts that the provisions of this State Act imposing compulsory contributions is invalid and void, it shall be the duty of the Commission to make such refunds to individual contributors as are entitled to the same.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 22.]

**Art. 5221b-21. Powers of Commission**

General Provisions: In all cases where the Commission is given authority to make investigations, to assemble information and to require the submission of documentary or oral testimony it is the intention of the Legislature to grant to the commission only such powers as are necessary for the Commission to exercise in order that they may properly administer this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 23.]

**Art. 5221b-22. Termination of Act**

Provisions for Termination of Act and Return of Contribution: In the event the Supreme Court of the United States hold the Federal Social Security Act approved by the President August 14, 1935,<sup>1</sup> unconstitutional or inoperative for any reason whatsoever, then in that event the powers, duties and levies herein provided for, shall have no further force or effect and the Commission shall cease to function and all payments of levies and taxes made hereunder and then remaining unexpended shall be upon proper proof returned ratably to those making such payments, and it shall be the duty of the Unemployment Compensation Commission to perform this Act, and the Unemployment Compensation Commission shall remain in performance of this duty only until such Act has been performed.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 24.]

<sup>1</sup> 42 U.S.C.A. §§ 301 to 1305.

**Art. 5221b-22a. Unemployment Compensation Special Administration Fund**

There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Special Administration Fund which may be used by the Commission for the purposes of paying costs of the administration of this Act including the costs of construction and purchase of buildings and land necessary in such administration. The State Treasurer shall be the Treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with the directions of the Commission. All interest and penalties collected under the provisions of this Act and all moneys now on deposit in the Unemployment Compensation Special Administration Fund shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Texas Unemployment Compensation Act.<sup>1</sup> Nothing in this Section, however, shall prevent said moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the Texas Unemployment Compensation Act, for which Federal funds have been duly requested but not yet received, subject to the charging of

such expenditures against such funds when received. The Commission may, by resolution duly entered in its Minutes, authorize to be charged against said moneys any expenditures which it deems proper in the interest of good administration of this Act, provided the Commission in such resolution finds that no other funds are available or can properly be used to finance such expenditures. All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act, and shall not lapse at any time or be transferred to any other fund. All moneys in the Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Special Administration Fund provided herein. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Special Administration Fund shall be deposited in said Unemployment Compensation Special Administration Fund. If it be determined by the Commission in accordance with the provisions of subsection 14(j) of this Act<sup>1</sup> that the Commission should refund penalties which have been erroneously collected and which have been deposited in the Unemployment Compensation Special Administration Fund, the refund of such penalties shall be made, without interest, out of the Unemployment Compensation Special Administration Fund, notwithstanding the provisions of subsection 14(j) of this Act that payment of all refunds shall be made out of the Unemployment Compensation Fund. Such refunds paid out of the Unemployment Compensation Special Administration Fund shall be paid upon warrants issued by the Comptroller under the direction of the Commission.

[Acts 1945, 49th Leg., p. 589, ch. 347, § 8; Acts 1949, 51st Leg., p. 282, ch. 143, § 9.]

<sup>1</sup> Article 5221b-12(j).

#### Art. 5221b-22b. Title

The body of law originally enacted in Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended, providing for an unemployment compensation system and an employment service in Texas, shall be known and may be cited as the "Texas Unemployment Compensation Act."<sup>1</sup>

[Acts 1945, 49th Leg., p. 589, ch. 347, § 9.]

<sup>1</sup> Article 5221b-1 et seq.

#### Art. 5221b-22c. Unemployment Compensation Commission

Wherever the name "Texas Unemployment Compensation Commission" appears in the Texas Unemployment Compensation Act, such name shall for all purposes be changed to the "Texas Employment Commission."

[Acts 1947, 50th Leg., p. 766, ch. 379, § 2.]

#### Art. 5221b-22d. Coverage of State Employees

The State of Texas hereby elects, with respect to all services performed in the employ of this State or any branch or department thereof or any instrumentality thereof which is not otherwise an employer subject to this Act, to become a reimbursing employer subject to this Act, and all services performed in the employ of this State or of any branch or department or instrumentality thereof shall be deemed to constitute employment. This election does not apply to political subdivisions of this State.

[Acts 1971, 62nd Leg., p. 2783, ch. 900, § 4, eff. Jan. 1, 1972.]

#### Art. 5221b-22e. Conformity With Federal Statutes

If any provision of this Act is held not to conform with Federal statute(s) by the Secretary of Labor, the Texas Employment Commission is hereby authorized to administer this Act so as to conform with the provisions of the Federal statute(s) until such time as the Legislature meets in its next session and has an opportunity to amend this Act.

[Acts 1971, 62nd Leg., p. 2784, ch. 900, § 5, eff. Jan. 1, 1972.]

#### Art. 5221b-22aa. Use of Fund for Payment of Legislative Expenses

In addition to all other purposes, as set out in Section 26 of this Act, for which the Unemployment Compensation Special Administration Fund may be used, moneys in this Fund in an amount not to exceed Sixty Thousand Dollars (\$60,000) may be used for the purpose of paying for the expenses of the Fifty-fifth Legislature as described in Chapter 1, Acts of the Fifty-fifth Legislature, Regular Session, 1957, as amended, and shall be available for appropriation or transfer by the Legislature to be used for such purpose during the biennium ending August 31, 1959.

[Acts 1957, 55th Leg., 2nd C.S., p. 181, ch. 21, § 4.]

#### Art. 5221b-23. Expired

#### Art. 5221b-24. Repeal; Saving Clause

The provisions of this Act shall repeal all parts of Chapter 482, General and Special Laws, Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General and Special Laws, Forty-fifth Legislature, Regular Session, as amended by Chapter 2, Title "Labor," General Laws, Forty-sixth Legislature, Regular Session,<sup>1</sup> in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be construed as for-

feiting or waiving any rights of the State of Texas or the Texas Unemployment Compensation Commission, including without limiting the foregoing, the right to collect contributions, interest, or penalties that have accrued under said Chapter, and the right of prosecution for violating any provision thereof.

[Acts 1941, 47th Leg., p. 1378, ch. 625, § 2.]

<sup>1</sup> Art. 5221b-1 et seq.

## CHAPTER FIFTEEN. INSPECTION OF STEAM BOILERS

### Art. 5221c. Inspection and Inspectors

#### Definitions

Sec. 1. The following terms as used in this Act shall be construed as follows:

"Commissioner" as used herein shall mean the Commissioner of the Bureau of Labor Statistics of the State of Texas;

"Inspector" as used herein shall mean the inspector of steam boilers appointed under the provisions of this Act;

"Deputy" as used herein shall mean any deputy inspector of boilers appointed under the provisions of this Act;

"Boiler" as used herein shall mean any vessel used for generating steam for power or heating purposes;

"Low Pressure Heating Boiler" as used herein shall mean a boiler operated at pressures not exceeding 15 lbs. per sq. in. gauge steam or at pressures not exceeding 160 lbs. per sq. in. gauge and temperatures not exceeding 250° F. for water;

"Owner or User" as used herein shall mean any person, firm or corporation owning or operating, or in charge of or in control of any boiler as herein defined;

"Safety device" as used herein shall mean any appurtenance attached to any boiler for the purpose of diminishing the danger of accidents;

"Code of Rules" as used herein shall mean the standard code of rules promulgated and adopted by the Commissioner under the provisions of this Act;

Unless otherwise specified, where the term "boiler" is used herein, it shall include "Low Pressure Heating Boilers."

#### Registration of Boilers; Certificate of Operation; Injunction Against Operation of Unsafe Boiler

Sec. 2. No boiler or low pressure heating boiler, unless otherwise specifically exempted in this Act, shall be operated within the State of Texas unless such boiler has been registered with the Bureau of Labor Statistics and there shall have been issued a Certificate of Operation for such boiler, as hereinafter provided for, and such Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner; such Certificate of Operation shall be

placed under glass in a conspicuous place on or near the boiler for which it is issued; and no prosecution shall be maintained where the issuance of or the renewal for such Certificate of Operation shall have been requested and shall remain unacted upon; provided, however, if the operation of such boiler without such Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner or the inspector of boilers or any deputy inspector as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of any inspector or deputy inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order.

#### Exemptions from Act

Sec. 3. The following boilers and low pressure heating boilers are exempt from the provisions of this Act.

1. Boilers under Federal control and stationary boilers at round houses, pumping stations and depots of railway companies under the supervision or inspection of the Superintendent of Motive Power of such railway companies.

2. Automobile boilers and boilers on road vehicles.

#### Exemptions from Sections 4, 5, 11 and 12 of Act

Sec. 3a. The following boilers and low pressure heating boilers shall be exempt from the requirements of Sections 4, 5, 11 and 12 of this Act:

1. Low pressure heating boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families;

2. Boilers and low pressure heating boilers located on farms and used exclusively for agricultural purposes;

3. Boilers and low pressure heating boilers used for cotton gins.

#### Inspections; Ordering Repairs to Unsafe Boiler; Hearing; Temporary Certificate

Sec. 4. The Commissioner shall cause to be inspected internally and externally not less frequently than once each twelve (12) months



each stationary steam boiler subject to the provisions of this Act. Each portable steam boiler subject to the provisions of this Act shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months. If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than one year from the date of such inspection. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the boiler inspector or any deputy may issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why he should not comply with said preliminary order. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as he deems proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The inspector in his discretion may issue a temporary Certificate of Operation for not to exceed thirty (30) days, pending the making of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. "Certificate of Operation" used in this Section shall mean the "Certificate of Operation" referred to in Section 2 of this Act.

#### Interval Between Internal Inspections

Sec. 4a. Upon the approval of the Commissioner and the inspection agency having jurisdiction, the interval between internal inspections may be extended for a period not to exceed twenty-four (24) months on stationary boilers and thirty-six (36) months on unfired boilers provided:

(1) continuous water treatment under competent and experienced supervision has been in effect since the last internal inspection for the purpose of controlling and limiting corrosion and deposits;

(2) accurate and complete records are available showing that since the last internal inspection samples of boiler water have been taken at regular intervals not

greater than twenty-four (24) hours of operation and that the water condition in the boiler is satisfactorily controlled;

(3) accurate and complete records are available showing the dates such boiler has been out of service and the reasons therefor since the last internal inspection, and such records shall include the nature of all repairs to the boiler, the reasons why such repairs were necessary and by whom the repairs were made; and

(4) the last internal and current external inspection of the boiler indicates the inspection period may be safely extended.

When such an extended period between internal inspections has been approved by the Commissioner and the inspection agency having jurisdiction, as outlined in this Section, a new Certificate of Operation shall be issued for that extended period of operation.

#### Insurance Companies to File Inspection Reports; Boilers Inspected by Insurance Companies Exempt from other Inspections; Certificate of Operation

Sec. 5. Every insurance company insuring boilers in this State shall, within thirty (30) days after inspecting any steam boiler, file a duplicate report of such inspection with the Commissioner showing the date of such inspection together with the name of the person making such inspection, and such report shall show fully the condition and location of such boiler at the time such inspection was made. Such report shall also state when the policy of insurance was issued by the insurance company on said boiler and the date of expiration of such policy of insurance.

The owner or user of every boiler inspected by an inspector for an insurance company authorized to do business in this State on which such insurance company has issued a policy of insurance after inspection thereof, shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any insured boiler at any reasonable time when, in the opinion of the Commissioner, such insured boiler may be in an unsafe condition, provided the Commissioner shall contact the insurance company carrying insurance on said boiler and that the inspector for the insurance company carrying such insurance and the inspector or deputy inspector shall jointly and together inspect the boiler, within twenty (20) days, for which inspection no additional charge shall be made as set forth in Section 12 of this Act. The Commissioner is authorized and has authority to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act, and the owner or user of an insured boiler shall pay the sum of Three Dollars (\$3) for each Certificate of Operation issued, and the owner or user of a State inspected boiler shall pay a like sum of Three Dollars (\$3) for each Certificate of Operation issued, which said fee shall be and is

absorbed by the internal and external inspection fee authorized in Section 12 of this Act. Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

**Commissioner to Promulgate Rules and Regulations;  
Exchange of Information**

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, installation, use, maintenance and operation of steam boilers and appurtenances thereof; including the boiler room; and to require such devices and safeguards and other reasonable means and methods to insure safe operation of steam boilers, including the registration thereof with the Bureau of Labor Statistics.

The Commissioner may exchange information and experience data with the department or other administrative authorities of States having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Before any rule, regulation or order is promulgated, adopted, enforced, amended, modified or repealed by the Commissioner a public hearing shall be held by him, and not less than ten (10) days before such hearing notice thereof shall be published in at least three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner. After the adoption of rules, regulations and orders by the Commissioner, a complete copy of same shall be published in at least three (3) newspapers, as in the notice of the hearing prior to their adoption, on two (2) different days not more than ten (10) days apart, and within thirty (30) days after the adoption of such rules, regulations and orders; provided that in lieu of publishing in newspapers the rules, regulations and orders by the Commissioner, as stated above, the Commissioner may publish and circulate said rules, regulations and orders or the repeal, modification or amendment of any such rule, regulation or order in such form or manner as he may determine; and such rules, regulations and orders shall become effective within ten (10) days after date of notice of adoption thereof or final publication, or at such later time as the Commissioner may, in the rules, regulations and orders, determine. The Commissioner is hereby authorized and empowered, in case of extreme emergency, to promulgate and enforce temporary rules, regulations and orders as he may deem necessary, without publishing the same as hereinabove di-

rected; provided, however, that when such temporary rules, regulations or orders are adopted the same shall not be effective for a period of more than twenty (20) days and no criminal prosecution, as hereinafter provided, shall be had until the provisions of Section 16 of this Act have been complied with.

**Party Aggrieved by Rule or Regulation; Procedure;  
Hearing; Modification of Rules**

Sec. 7. When any interested person shall deem himself aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, he shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same upon his own motion; upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

**Inspector, Appointment and Qualification;  
Deputy Inspectors**

Sec. 8. Within thirty (30) days after the passage of this Act the Commissioner shall appoint a suitable person to be inspector of steam boilers for the State of Texas. Said inspector of steam boilers shall be a resident citizen of Texas for at least five (5) years next preceding to the time of his appointment and shall have had, at the time of such appointment, not less than five (5) years practical experience with steam boilers as a steam engineer, boilermaker or boiler inspector and by examination enable him to judge the safety of boilers for use, and who is neither directly nor indirectly interested in the manufacture, ownership or agency of steam boilers or their appurtenances. It shall be the duty of the Commissioner to appoint one (1) or more deputy inspectors as needed with like qualifications of the inspector of steam boilers, and such clerical assistants as may be necessary to carry out the provisions of this Act.

**Salaries and Expenses**

Sec. 9. The salary of the inspector of steam boilers shall not exceed Three Thousand Dollars (\$3,000) per annum and the salary of each deputy inspector shall not exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and in addition thereto all inspectors shall be allowed their actual expenses incurred in the performance of their official duties, and for such equipment as may be deemed necessary by the Commissioner. All expenses incident to carrying out the provisions of this Act shall be paid out of the funds in the State Treasury to the credit of the "State Boiler Inspection Fund" on vouchers or warrants is-

sued and signed by the Commissioner and the Comptroller of Public Accounts. The Commissioner may incur such expense for clerical assistants and office supplies as may be necessary, not exceeding Seven Thousand, Five Hundred Dollars (\$7,500) annually, said sums to be paid by the State Treasurer on warrants drawn by the Comptroller of Public Accounts.

Persons Authorized to Inspect; Commission from  
Commissioner Showing Qualifications;  
Power of Commissioner

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the inspector of boilers or any deputy inspector, or by any qualified boiler inspector employed by any county, or city and county, or city, or any insurance company, provided that such persons making inspections (other than the inspector of boilers or deputy inspectors regularly employed by the Commissioner) shall first obtain from the Commissioner a commission as inspector showing his qualifications to make such inspections. The Commissioner is vested with full power and authority to determine the qualifications of any applicant or other person seeking a commission as inspector, by examination. At the discretion of the Commissioner he may accept, after proper investigation by him, the commission issued to an inspector by any other state having an examination equal to that of the State of Texas. The Commissioner may rescind at any time, upon good cause being shown therefor, any commission as inspector issued by him to any person, and he may at any time, upon good cause being shown therefor and after notice and opportunity for hearing thereon, revoke any Certificate of Operation issued for any steam boiler within this State.

Reports of Inspections

Sec. 11. Every inspector receiving a commission as inspector shall forward to the Commissioner on forms furnished the inspector by the Commissioner, within thirty (30) days after an inspection is made, a report of such inspection, in default of which the commission as inspector may be cancelled by the Commissioner.

Fees for Inspections

Sec. 12. The Commissioner shall fix and collect fees for the inspection of steam boilers covered by this Act, which exceed thirty (30) inches in diameter, external and internal inspection not to exceed Fifteen Dollars (\$15) in each twelve-month period; and for boilers exceeding twenty-four (24) inches in diameter and not exceeding thirty (30) inches in diameter, Ten Dollars (\$10) for each complete inspection in each twelve-month period; and boilers not exceeding twenty-four (24) inches in diameter, Five Dollars (\$5) for each complete inspection in each twelve-month period. Provided that, when a boiler is found unfit for further use no Certificate of Inspection shall be issued and the use of such condemned boiler

may be prohibited. Provided further that the Commissioner or any of his employees shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase. And provided that when any inspector or employee of the Commissioner tears down a boiler in a cleaning and pressing establishment said inspector or employee shall assist the owner to repair and assemble said boiler as it was before it was dismantled, and if he fails to assist said owner said fee shall not be paid. Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected. No fees shall be charged the owner or user by the Commissioner when the inspection herein provided for has been made by an inspector holding a commission as inspector from said Commissioner if the holder of such commission as inspector is employed by any county, or city and county, or city, or insurance company except the charge fixed for Certificate of Operation in Section 5 hereof. All fees collected by the Commissioner under this Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

Penalties for Violations by Persons in  
Charge of Steam Boilers

Sec. 13. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any steam boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Violations by Operators of Factories, Mills, Mines, Stores,  
or Business Houses, Misdemeanors

Sec. 14. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any mineral estate in land, or any other place where a steam boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Bureau of Labor Statistics to enter the same and remain thereon or therein for such time as is reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter him from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dol-

lars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

**Notice of Violation of Act or Rule or Regulation  
Prerequisite to Criminal Prosecution**

Sec. 15. Whenever there shall have been adopted, after notice and hearing as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order by publishing a complete copy of same in three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner, once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such rule, regulation, and order shall be effective and enforceable in any criminal action brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provision or any amendment or modification of any rule, regulation or order of the Commissioner until and unless the said Commissioner shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended rule, regulation or order in three (3) newspapers published and having general circulation in the State of Texas once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act; provided that in lieu of the publishing in newspapers of rules, regulations, orders, amendments and modifications, as stated above, the Commissioner may publish and circulate said rules, regulations, orders, amendments or modifications in such form or manner as he may determine.

**Affidavit of Commissioner Stating Terms of Order and  
Publication Thereof Prima Facie Evidence**

Sec. 16. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the inspector of boilers or any deputy inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be prima facie evidence of all such facts, and such affidavit shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

**Disposition of Funds; General Revenue Fund**

Sec. 17. The funds collected under the provisions of this Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

**Appropriation**

Sec. 18. Repealed.

**Partial Invalidity**

Sec. 19. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof.

[Acts 1937, 45th Leg., p. 893, ch. 436; Acts 1939, 46th Leg., p. 433, §§ 1 to 3; Acts 1951, 52nd Leg., p. 273, ch. 158, § 1; Acts 1955, 54th Leg., p. 445, ch. 121, § 1; Acts 1957, 55th Leg., p. 1331, ch. 452, § 1; Acts 1959, 56th Leg., p. 947, ch. 440, §§ 1 to 3; Acts 1961, 57th Leg., p. 496, ch. 239, §§ 1 to 3; Acts 1963, 58th Leg., p. 131, ch. 78, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 887, ch. 440, §§ 1, 2, eff. June 16, 1965.]

**CHAPTER SIXTEEN. MISCELLANEOUS  
PROVISIONS**

**Article**

5221d. Retirement, Death or Other Benefit or Savings Plan; Payments or Refunds by Employer or Trustee; Relief From Liability.

5221e. Repealed.

5221e-i. Migrant Labor Camps; Licensing.

5221f. Mobile Homes Standards Act.

**Art. 5221d. Retirement, Death or Other Benefit or Savings Plan; Payments or Refunds by Employer or Trustee; Relief From Liability**

Sec. 1. Whenever payment or refund is made to an employee, former employee, or his beneficiary or his heirs, legatees or the representative of his estate pursuant to a written retirement, death, or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer, former employer, and any trustee making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment or refund is made by the employer or former employer, has received at its principal place of business within this State, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof or where a trustee is making the payment or refund, such notice has been received by the trustee at its home office.

Sec. 2. Should said payment or refund, made as provided in Section 1 above, be comprised in whole or in part of stock in any corporation, such corporation may accept said stock for transfer as directed by the employer, former employer, or the trustee making such payment or refund, and shall be entitled to treat the transferee as the owner of said stock for all purposes unless and until the corporation has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such stock or to some interest therein.

Sec. 3. Nothing contained in this Act shall affect any claim or right to any such payment

or refund or part thereof as between all persons other than the employer or former employer and the trustee making such payment or refund, or the corporation accepting such stock for transfer.

[Acts 1955, 54th Leg., p. 470, ch. 132.]

**Art. 5221e. Repealed by Acts 1965, 59th Leg., p. 213, ch. 86, § 2, eff. Sept. 1, 1965**

This article, derived from Acts 1957, 55th Leg., p. 1255, ch. 417, created a Texas Council on Migrant Labor, setting out its duties and powers, and providing for its operation. See, now, article 4101-2, § 4.

**Art. 5221e-1. Migrant Labor Camps; Licensing**

**Definitions**

Sec. 1. The following words and phrases shall mean:

(a) Migrant labor camp: One or more buildings or structures, tents, trailers, or vehicles, contiguous or grouped, together with the land appertaining thereto, established, operated, or used as living quarters for fifteen or more seasonal, temporary, or migrant persons, and occupied for more than three days, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(b) Person: An individual or group of individuals, association, partnership, or corporation.

(c) Migrant agricultural worker: An individual who is employed in agriculture or performing agricultural labor on a seasonal or temporary basis and residing away from his usual home or residence.

**Necessity of License and Posting; Time Limit for Existing Camps**

Sec. 2. No person shall establish, maintain, or operate any migrant labor camp in this state without first obtaining a license therefor from the State Commissioner of Health. Such license shall be posted and kept posted in the migrant labor camp to which it applies at all times during maintenance or operation. Operators of migrant labor camps now in existence shall have 150 days from the date of promulgation of rules and regulations issued under this Act in which to obtain a license; provided, however, the regulations adopted by the State Board of Health under this Act shall not become effective until July, 1971.

**Application; Fee; Temporary Permit Pending Inspection**

Sec. 3. Application for a license to establish, operate, or maintain a migrant labor camp shall be made to the State Commissioner of Health on a form and under regulations prescribed by him. The application shall state the location and ownership of the existing or proposed migrant labor camp, the approximate number of persons to be accommodated, the probable periods of use, and any other information the State Board of Health may require. The application shall be accompanied by a li-

cense fee which shall be in accordance with the following schedule:

<u>Family Type Housing (Both Sexes)</u>	
2 to 10 dwelling units	\$20
11 to 30 dwelling units	\$35
31 or more dwelling units	\$50
<u>Dormitory Type Housing (Single Sex)</u>	
24 beds or less	\$15
25 beds or more	\$20

Upon receipt of the application and fee the person shall be issued a temporary license permitting operation of the camp until such time as an official inspection visit can be made by an authorized representative of the State Commissioner of Health.

**License; Issuance; Nontransferability; Expiration; Renewal**

Sec. 4. After an inspection has been made, if the camp meets the reasonable, minimum standards of construction, sanitation, equipment, and operation required by regulations issued under and in accordance with this Act, the State Commissioner of Health shall issue, in the name of the State Department of Health, the necessary license to operate a migrant labor camp. The license, unless sooner revoked, shall expire one year after the date of issuance unless renewed, and it shall not be transferable. All applications for renewal shall be filed with the State Commissioner of Health not less than 30 days prior to its expiration, on forms furnished by the State Department of Health and accompanied by renewal fee in accordance with the schedule in Section 3 of this Act.

**Failure to Pass Inspection; Revalidation of Temporary Permit for Period; Re-inspection**

Sec. 5. After an inspection has been made, if the camp does not meet the reasonable, minimum standards of construction, sanitation, equipment, and operation required by regulations issued under and in accordance with this Act, the State Commissioner of Health will revalidate the temporary permit for a period not to exceed 6 months, at the discretion of the duly authorized representative who made the inspection, to permit the person sufficient time to prepare the camp to pass inspection. When the person is confident the camp is ready he may request an inspection or wait for the inspection visit that will automatically take place at the termination of the revalidation period.

**Suspension or Revocation of License; Complaint; Hearing; Procedure; Re-application for License**

Sec. 6. The State Commissioner of Health is hereby authorized to suspend or revoke a license issued in accordance with the provisions of this Act, for violation of any of the provisions of this Act or the rules and regulations issued pursuant thereto. The duly authorized representative of the State Commissioner of Health shall have the power to issue a complaint to the State Commissioner of Health for

violation of any of the provisions of this Act or any regulations lawfully promulgated by said State Board of Health. Provided further, that the said person, as defined in this Act, is entitled to a fair hearing in the county in which the migrant labor camp is located and to be represented by legal counsel if desired, and shall be considered by the State Commissioner time following the complaint, stating the grounds of complaint, date, time, and place set for hearing. If the State Commissioner of Health finds that the complaint is true, such license may then be suspended or revoked as herein provided. Following revocation, a new application, accompanied by the respective fee, shall be considered by the State Commissioner of Health, if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and it is found that the provisions of this Act have been complied with and the rules and regulations promulgated thereunder have been satisfied.

#### Rules and Regulations

Sec. 7. The State Board of Health shall make and promulgate such reasonable rules and regulations as may be determined to be necessary to protect the health and safety of persons living in migrant labor camps, prescribing standards for living quarters at such camps, including provisions relating to construction of camps, sanitary conditions, water supply, toilets, sewage disposal, refuse and garbage storage, collection, and disposal, light, air, safety, protection from fire hazards, equipment, maintenance and operation of the camp, and such other matters as they may determine to be appropriate or necessary for the protection of the health and safety of occupants. Said Board of Health shall have the authority to modify or repeal any of these rules and regulations as deemed necessary.

#### Care of Facilities by Employees and Occupants

Sec. 8. Every employee and occupant of a migrant labor camp using the sanitary and other facilities furnished for his convenience shall comply with all applicable rules, regulations, and standards promulgated in accordance with the provisions of this Act for the care and upkeep of such facilities, that the Board of Health has determined to be necessary to protect the health and safety of all employees and occupants.

#### Inspection; Notice; Right of Entry

Sec. 9. The State Commissioner of Health or his duly authorized representative, after giving notice or having made a reasonable attempt to give notice to the camp operator, may enter and inspect migrant labor camps at reasonable hours and investigate such facts, conditions, and practices or matters as may be necessary or appropriate to determine whether any person has violated any provisions of this

Act or whether rules, regulations, and standards of the State Board of Health pertaining hereto are being violated.

#### Review of Commissioner's Decisions

Sec. 10. All decisions of the State Commissioner of Health hereunder may be reviewed in the county, or district, court of the county in which such migrant labor camp is located or contemplated.

#### Violations; Penalties; Injunction; Appeal

Sec. 11. (a) Any person, as defined in this Act, establishing, conducting, maintaining, or operating any migrant labor camp, within the meaning of this Act, without first obtaining a license therefor as provided herein or without having secured renewal of license as provided by this Act or who shall violate any of the provisions of this Act, or regulations lawfully promulgated thereunder; and

(b) any employee or occupant who does not use the sanitary facilities furnished for his convenience, or who commits an act of vandalism or misuse of the facilities, or who violates applicable regulations lawfully promulgated within the meaning of this Act shall be guilty of a misdemeanor, and upon conviction hereof be subject to a fine of not more than \$25; but if the violation is committed after a conviction of such employee or occupant under the provisions of this Act has become final, such person, employee, or occupant shall be subject to imprisonment for not more than 30 days, or a fine of not more than \$100, or both imprisonment and fine.

In addition to other remedies, the Commissioner of Health or his designated representative is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for good cause shown to grant, a temporary or permanent injunction restraining and enjoining any person, as defined in this Act, employee, or occupant from violating any of the provisions of this Act. Such person, employee, or occupant, so enjoined, shall have the right to appeal such injunction, temporary or permanent, to the Supreme Court of the State of Texas, as in other cases.

#### Enforcement

Sec. 12. It shall be the duty of the State Commissioner of Health to enforce the provisions of this Act.

#### Conflicting Laws Repealed

Sec. 13. All laws or parts of laws in conflict herewith are hereby repealed.

#### Severability

Sec. 14. If any section, sentence, subdivision, or clause herein shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

[Acts 1971, 62nd Leg., p. 2446, ch. 788, eff. June 8, 1971.]

**Art. 5221f. Mobile Homes Standards Act**

**Short Title**

Sec. 1. This Act may be cited as the Texas Mobile Homes Standards Act.

**Definitions**

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "Mobile home" means a movable or portable dwelling constructed to be towed by a motor vehicle on its own chassis, over Texas roads and highways under special permit, connected to utilities, and designed without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity or of two or more units, separately towable but designed to be joined into one integral unit.

(2) "Seal" means a device or insignia issued by the department to indicate compliance with the standards, rules and regulations established by the department or the board for mobile homes.

(3) "Dealer" means any person, other than a manufacturer, as defined herein, firm or corporation, who sells or offers for sale three or more mobile homes in any consecutive twelve month period.

(4) "Manufacturer" means any person who manufactures mobile homes and sells to dealers or to the public.

(5) "Department" means the Bureau of Labor Statistics.

(6) "Board" means the Performance Certification Board.

**Performance Certification Board**

Sec. 3. (a) There is hereby created the Performance Certification Board which shall promulgate standards and requirements for the manufacture of mobile homes in this State.

(b) The board shall consist of nine citizens of the State appointed by the Governor, including one representative of an incorporated municipality, one representative of an insurer of mobile homes, one manufacturer of industrialized housing, two manufacturers of mobile homes, one architect, one structural engineer, one electrical engineer and one representative of the consumers of Texas.

(c) The members of the board shall hold office for staggered terms of six years with the terms of three members expiring on September 1st of odd numbered years. In the initial appointments to the board, the Governor shall designate three members to serve for two years, three to serve for four years, and three to serve for six years. Each member shall hold office until his successor is appointed and has qualified.

(d) If a vacancy occurs in the office of one of the members of the board, the position shall be filled by a person appointed by the Governor,

and the person so appointed shall serve only to the end of the unexpired term.

(e) The chairman of the board shall be selected by the Governor and serve at his pleasure. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.

(f) A member of the board is not entitled to salary for duties performed as a member of the board, but he shall be entitled to \$25 each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.

(g) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two or more members of the board. A majority of the board shall constitute a quorum to transact business.

(h) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in this Act shall be provided by the department and shall function under the supervision of the administrative head of the department.

**Establishment of Uniform Standards Code**

Sec. 4. (a) The board shall adopt such standards and requirements for the installation of plumbing, heating, and electrical systems in mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public.

(1) Said standards and requirements shall be reasonably consistent with the fundamental principles adopted, recommended, or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes.

(2) It is unlawful for any person to sell or offer for sale within this State any mobile home manufactured after the effective date of this Act unless such mobile home meets the plumbing, heating and electrical installation requirements adopted by the board pursuant to this Act.

(b) The board shall adopt such standards and requirements for the body and frame design and construction of mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public.

(1) Said standards and requirements shall be reasonably consistent with the

fundamental principles adopted, recommended, or issued as ANSI Standard A119.1 and amended from time to time by the American National Standards Institute (ANSI), successor to the United States of America Standards Institute (USASI) applicable to mobile homes as defined herein.

(2) It is unlawful for any person to sell or offer for sale within this State any mobile home manufactured more than twelve months after the formal adoption and promulgation of standards and requirements for the body and frame design and construction of mobile homes unless such mobile homes meet said standards and requirements.

(c) The board may adopt and promulgate any changes in and additions to the standards referred to in Subsections (a) and (b) of this section made by the American National Standards Institute.

(d) At least 30 days before the adoption or promulgation of any change in or addition to the standards authorized in Subsection (c) of this section, the board shall mail to all manufacturers possessing valid certificates of acceptability a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the board will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views or arguments with or without opportunity to present the same orally in any matter.

(f) The adoption of requirements and standards or modification, amendment or repeal of requirements and standards shall require the approval of the board.

(g) Every requirement or standard or modification, amendment or repeal of a requirement or standard adopted by the board shall state the date it shall take effect.

(h) Every requirement or standard or modification, amendment or repeal of a requirement or standard shall, immediately after adoption, be certified by the chairman of the board, or in his absence or where he is unable to act, by the temporary chairman.

(i) Immediately after their promulgation, the board shall publish all requirements and standards or amendments thereto.

(j) The standards and requirements adopted or promulgated by the board for the installation of plumbing, heating and electrical systems in mobile homes and for the body and frame design and construction of mobile homes shall be known as the Uniform Standards Code for Mobile Homes (hereinafter referred to as the "Code").

#### Regulations

Sec. 5. (a) It is unlawful for any manufacturer to manufacture mobile homes in this State more than twelve months after the formal adoption and promulgation of standards and requirements for the body and frame design and construction of mobile homes unless such manufacturer has been issued a certificate of acceptability for such mobile homes from the department. This provision shall not, however, apply to mobile homes manufactured in this state and designated for delivery to and sale in a state that has a code that is inconsistent with this Act.

(b) The department shall require that the manufacturer establish and submit to the department for approval, systems for quality control and transportation, prior to the issue of certificates of acceptability.

(1) The department shall issue a certificate of acceptability to any manufacturer within or without this state upon receipt of an application from such manufacturer to which is attached an affidavit certifying that any mobile home manufactured by the applicant will be built in compliance with the code.

(2) Each application by a manufacturer for a certificate of acceptability shall be accompanied by quality control plans which will provide adequate evidence that the mobile homes for which a certificate of acceptability is requested will in fact be manufactured in compliance with the code.

(3) Prior to the issuance of a certificate of acceptability to a manufacturer, the department shall require the submission of a description of a transportation system which will provide adequate evidence that movement of the mobile homes will not result in deviations from requirements set out in the Code.

(c) No mobile home for which a certificate of acceptability had been issued shall be modified in any way prior to installation without prior written approval of the department.

(d) The board may determine that the standards for mobile homes established by a state or a recognized body or agency or the federal government are at least equal to the Code. If the department finds that such standards are actually enforced then it shall issue a certificate of acceptability for such mobile homes.

(e) The department shall make and enforce rules and regulations reasonably required to effectuate the provisions of this Act and may amend or revoke any rule it makes.

(f) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsection (e) of this section the department shall mail to all manufacturers possessing valid certificates of acceptability a notice including:

(1) a copy of the proposed changes and additions; and



(2) the time and place that the department will consider any objections to the proposed changes and additions.

(g) After giving the notice required by Subsection (f) of this section, the department shall afford interested persons an opportunity to participate in the rule making through submission of written data, views or arguments with or without opportunity to present the same orally in any matter.

(h) Every rule or regulation or modification, amendment or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

(i) Immediately after their promulgation, the department shall publish all rules and regulations or amendments thereto.

#### Dealers

Sec. 6. It is unlawful for any dealer within or without this State to sell or offer for sale to dealers or to the public of this State any mobile home manufactured more than twelve months after the adoption or promulgation of the Code unless said mobile home complies with the Code, bears a seal of approval issued by the department, and is the manufactured product of a manufacturer possessing a current certificate of acceptability issued by the department.

#### Seal of Approval

Sec. 7. (a) No manufacturer who has received a certificate of acceptability from the department may sell or offer for sale in this State mobile homes unless such mobile homes bear a seal of approval issued by and purchased from the department.

(b) Any dealer who has acquired a used mobile home without a seal may apply to the department for a seal along with an affidavit that the unit has been brought up to or meets the Code.

#### In-plant Inspection

Sec. 8. (a) The department is empowered to inspect, at the place of manufacture, all mobile homes for which it has issued certificates of acceptability. The department may, at its discretion, accept in-plant inspection reports by a recognized body or agency having follow up in-plant inspection service certifying that the mobile homes comply with the terms and conditions of the certificate of acceptability.

(b) The department may establish and require such training programs in the concept, techniques, and inspection of mobile homes for the personnel of local governments, as the department considers necessary.

Sec. 9. [Blank].

#### Employment of State Inspectors

Sec. 10. (a) The department may set qualification, employ and fix the compensation of such state inspectors as the department deems necessary to carry out the functions of this Act.

(b) To carry out the provisions of the Act, the department may authorize the state inspectors to travel within or without the state for the purpose of inspecting the manufacturing facilities for mobile homes or for any other purpose in connection with the Act.

#### Fees and Charges

Sec. 11. (a) The board with the advice of the department shall establish a schedule of fees to pay the cost incurred by the department for the work relating to the administration and enforcement of this Act.

(b) The board shall set a fee for the issuance and annual renewal of certificates of acceptability which shall not exceed \$100 per year.

(c) The board shall also set a charge for the issuance of seals of approval which shall not exceed \$3 per seal.

(d) All fees shall be paid to the state treasury and placed in a special account for the use of the department in the administration and enforcement of this Act.

#### Penalties

Sec. 12. (a) Any manufacturer who violates or fails to comply with this Act shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation within 60 days. Should the manufacturer fail to make the necessary correction(s) within the specified time, the department may, after notice and hearing, suspend or revoke any certificate of acceptability if it finds that:

(1) the manufacturer has failed to pay the fees authorized by this Act; or that

(2) the manufacturer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act.

(b) The hearing shall be held upon 15 days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact and a copy thereof shall be forthwith delivered to the manufacturer. Such order, findings, and the evidence considered by the department shall be filed with the public records of the department.

(c) The department may obtain injunctive relief from any court of competent jurisdiction to enjoin the sale or delivery of any mobile home in this state upon an affidavit of the department specifying the manner in which such mobile home does not conform to the requirements of this Act or to the rules and regulations issued by the department pursuant hereto.

(d) Any person who manufactures, sells, or offers for sale a mobile home in this state in violation of the provisions of this Act shall be

guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding Two Hundred Dollars (\$200) per day or by confinement not exceeding 30 days, or both.

#### Appeals

Sec. 13. (a) The board shall hear appeals brought by any person or party regarding the application to such person or party of any rule, regulation or standard promulgated pursuant to this Act.

(b) The board shall promulgate such rules and regulations as necessary to the conduct of hearings on appeals provided for in this Section.

#### Mobile Home Tie-down Standards

Sec. 14. The Board shall establish, as a part of the Standards Code, minimum standards for the proper blocking, anchoring and securing of all mobile homes within this State when such structures are occupied or inhabited so that such mobile homes shall withstand winds of minimum hurricane-force velocity within the first two tiers of coastal counties within this State and which shall withstand winds of minimum gale-force velocity in all other counties in this State. The Board shall adopt rules and regulations relating to the enforcement of such standards and of rules and regulations established pursuant to this Section. Counties and municipalities may, with the approval of the Board (which shall not unreasonably be withheld), adopt more stringent standards when necessary for the public health and safety. From and after one hundred eighty (180) days following the effective date of the minimum standards established and promulgated by the Board, or any subsequent changes or modifications thereof, no person shall occupy or inhabit any mobile home purchased after the effective date of such standards and which is situated or located within three hundred (300) feet of any other mobile home, residence, building or structure which is occupied or inhabited unless such mobile home is blocked, anchored or secured in accordance with such minimum standards. For good cause shown on application to the Board, extensions of not to exceed ninety (90) days may be granted by the Board to any owner or occupant of a mobile home for the proper blocking, anchoring and securing of a mobile home. The blocking, anchoring or securing of a mobile home for the sole purpose of compliance with this Act shall not, in and of itself, be deemed to change the property characteristics or clas-

sifications which would otherwise be given in law or equity to a mobile home.

#### Local Coordination and Inspection

Sec. 15. The Board shall coordinate with all units of local government within this State and, when requested, shall authorize local units of government to make and perform inspection and enforcement activities related to the proper blocking, anchoring and securing of mobile homes pursuant to contracts or other official designations.

#### Fees

Sec. 16. The Board shall fix and establish a reasonable fee not to exceed Ten Dollars (\$10.00) for the inspection of mobile home tie-down and anchoring devices which shall be paid by the owner of the mobile home to the Board or the local governmental subdivision making or performing such inspection.

#### Penalties

Sec. 17. Any person found guilty of violating any of the provisions of this Act or of any rule or regulation of the Board shall be guilty of a misdemeanor and on conviction shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) and all costs of court. If a mobile home subject to this Act is not blocked, anchored and secured as required by this Act and the standards, rules and regulations adopted by the Board, the city, county or district attorney of the city or county in which the mobile home is located may sue in the name of the State for appropriate injunctive relief to enforce compliance by the owner of the mobile home with this Act or such standards, rules or regulations. The suit shall be brought in the county where the mobile home is located. Such a suit for injunctive relief shall not relieve a defendant from any criminal liability under this section. [Acts 1969, 61st Leg., p. 1945, ch. 656, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2765, ch. 896, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1673, ch. 606, § 1, eff. June 15, 1973.]

Sections 2 to 4 of the 1971 amendatory act provided: "Sec. 2. Effective Date. This Act shall take effect on September 1, 1971.

"Sec. 3. Applicability. No mobile home manufactured or sold prior to the time limitation included in this Act shall be affected by its provisions.

"Sec. 4. Severability Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 of the 1973 amendatory act provided: "If any provision of this Act, or any part thereof, shall be declared or rendered invalid and of no force or effect, such invalidity shall not affect any remaining provisions of the Act, and such remaining provisions shall be severable therefrom just as if such invalid provision, or part thereof, had never been included as a part thereof."

## TITLE 84

### LANDLORD AND TENANT

#### Article

- 5222. Landlord's Lien.
- 5223. When Lien Expires.
- 5224. Does Not Apply.
- 5225. Tenant Not to Remove Property.
- 5226. Removal Not a Waiver.
- 5227. Distress Warrant.
- 5228 to 5231. Repealed.
- 5232. Judgment Against Sureties.
- 5233 to 5235. Repealed.
- 5236. Rights of Tenant.
- 5236a. Notice for Terminating Certain Tenancies.
- 5236b. Landlord's Agent for Service of Process.
- 5236c. Willful Interruption of Utilities and Willful Exclusion by Landlord.
- 5236d. Landlord's Lien for Rent.
- 5236e. Security Deposits; Minimum Age for Entering Into Rental Agreements.
- 5237. Tenants Shall Not Sub-let.
- 5238. Owners of Buildings Lien.
- 5238a. Repealed.
- 5239. Distress Warrant.

#### Art. 5222. Landlord's Lien

All persons leasing or renting lands or tenements at will or for a term of years shall have a preference lien upon the property of the tenant, as hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished or caused to be furnished by the landlord to the tenant to make a crop on such premises; and to gather, secure, house and put the same in condition for marketing, the money, animals and tools and provisions and supplies so furnished or caused to be furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished or caused to be furnished by the landlord to the tenant and to the crop raised on such premises. Provided, further, that all persons leasing or renting lands or tenements at will or for a term of years where the landlord furnishes everything except the labor and the tenant furnishes the labor shall have a preference lien upon the crop or crops grown on such premises for any rent that may become due and for all money, provisions and supplies furnished or caused to be furnished by the landlord to the tenant, to make a crop on such premises; and to gather, secure, house, and put the same in condition for marketing, the money, provisions and supplies so furnished or caused to be furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property, and this lien shall apply only to the crop or crops grown on the premises for the year in which the same is furnished or caused to be furnished.

This article shall not apply in any way or in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor and the landlord directly or indirectly charges a rental of more than one-half the value of the grain and more than one-half of the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements at will or for a term of years for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for shall not carry any statutory lien nor shall such lien attach in favor of the landlord, his estate or assigns, upon any of the property named, nor for the purpose mentioned in this article.

[Acts 1925, S.B. 84; Acts 1931, 42nd Leg., p. 171, ch. 100, § 1.]

#### Art. 5223. When Lien Expires

Such preference lien shall continue as to such agricultural products and as to animals, tools and other property furnished to the tenant, as aforesaid, so long as they remain on such rented or leased premises, and for one month thereafter; and such lien as to agricultural products, if stored in public or bonded warehouses controlled or regulated by the laws of the State within thirty days after the removal of said products from said rented premises, shall continue so long as they remain in such warehouses; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sale.

[Acts 1925, S.B. 84.]

#### Art. 5224. Does Not Apply

Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant.

[Acts 1925, S.B. 84.]

#### Art. 5225. Tenant Not to Remove Property

The tenant, while the rent and advances remain unpaid, shall not without the consent of the landlord remove or permit to be removed from the premises so leased or rented any agricultural product produced thereon, or any of

the animals, tools or property furnished as aforesaid.

[Acts 1925, S.B. 84.]

**Art. 5226. Removal Not a Waiver**

The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises.

[Acts 1925, S.B. 84.]

**Art. 5227. Distress Warrant**

When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs or legal representatives may apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant. If a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated or in which the defendant may reside, such warrant shall be made returnable, to, and the affidavit and bond upon which it is issued shall be transmitted by the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside.

[Acts 1925, S.B. 84.]

**Art. 5228 to 5231. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 5232. Judgment Against Sureties**

When the property levied on has been replevied and if final judgment is rendered against the defendant, such judgment shall also be against him and his sureties on his replevy bond for the amount of the judgment and interest or for the value of the property replevied and interest, according to the terms of such bond.

[Acts 1925, S.B. 84.]

**Art. 5233 to 5235. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 5236. Rights of Tenant**

Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property

of the landlord in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract.

[Acts 1925, S.B. 84.]

**Art. 5236a. Notice for Terminating Certain Tenancies**

(a) A monthly tenancy or tenancy from month to month may be terminated by the landlord or the tenant by one month's notice given to the other party. When the rent reserved in a lease is payable at periods of less than a month, the time of the notice of termination is sufficient if it is equal to the interval between the times of payment. The notice is not void merely because it mentions a day for the termination of the tenancy not corresponding to the conclusions or commencement of the rent-paying period, but rather the notice terminates the tenancy at the end of a period equal in time to that in which the rent is made payable, unless a later date is specified.

(b) If the notice required by Subsection (a) of this section terminates the tenancy on a day which does not correspond to the conclusion or commencement of a rent-paying period, the tenant is liable only for rent up to the date of termination and not liable for rent for the balance of the rent-paying period.

(c) Subsection (a) of this section does not apply when

(1) by written agreement, signed by the landlord and tenant, a different period of notice, or no notice, is to be given; or

(2) there is any breach of contract recognized by law.

[Acts 1967, 60th Leg., p. 1174, ch. 525, § 1, eff. Aug. 28, 1967.]

**Art. 5236b. Landlord's Agent for Service of Process**

**Authorized Agent**

Sec. 1. In any lawsuit by a tenant founded on an oral or written rental agreement for a residential dwelling or in any lawsuit to enforce a legal obligation of the owner in his capacity as landlord, the owner's management company, on-premise manager, or rent collector serving such dwelling unit shall automatically be the owner's authorized agent for service of process unless the owner's name and business street address has been furnished in writing to the tenant.

**Management Company as Agent**

Sec. 2. Provided, however, if the residential dwelling unit is managed by a management company whose name and business street address has been furnished in writing to the tenant, only such management company shall be the owner's agent for such service of process under Section 1 above.

[Acts 1973, 63rd Leg., p. 1226, ch. 441, § 1, eff. Sept. 1, 1973.]

Sections 1 to 3 of the 1973 Act added articles 5236b to 5236d; §§ 4 to 6 thereof provided:

"Sec. 4. Effective date. This Act shall take effect on September 1, 1973, and shall apply to all residential rental

agreements, written or oral, executed or entered into after such date.

"Sec. 5. Laws in conflict. All laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency. Article 5238a, Vernon's Texas Revised Civil Statutes, is hereby expressly repealed.

"Sec. 6. Severability. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision or application."

**Art. 5236c. Willful Interruption of Utilities and Willful Exclusion by Landlord**

**Interruption of Utilities**

Sec. 1. It shall be unlawful under any circumstances for a landlord or his agent to interrupt or cause interruption of utilities paid for by the tenant directly to the utility company.

**Willful Exclusion of Tenant**

Sec. 2. It shall be unlawful for a landlord or his agent to willfully exclude a tenant from the tenant's premises in any manner except by judicial process. Willful exclusion shall mean preventing the tenant from entering into the premises with intent to deprive the tenant of such entry. Provided, however, a landlord or his agent shall not be prevented from removing the contents of the premises when the tenant has abandoned the premises or from changing door locks when the tenant's rentals are in fact delinquent in whole or in part. When such door lock is changed under such circumstances, a written notice shall be left on the tenant's front door describing where the new key may be obtained at any hour and describing the name of the individual who will provide the tenant with such key; and such key shall be provided regardless of whether the tenant pays any delinquent rentals.

**Bona Fide Repairs, Construction or Emergencies**

Sec. 3. The landlord or his agent shall not be guilty of a violation of this Article if the action complained of resulted from bona fide repairs, construction, or emergencies.

**Remedies of Tenant; Damages; Attorneys Fees**

Sec. 4. Upon violation of this Article by the landlord or his agent, the tenant may recover possession or terminate the rental agreement; and, in either case, the tenant may recover actual damages, plus one month's rent, plus reasonable attorneys fees, less any delinquent rentals or other sums for which the tenant is liable.

**Waiver of Rights and Liabilities Void and Unenforceable**

Sec. 5. Any provision of an oral or written rental agreement between the landlord and tenant which purports to exempt the landlord or tenant from any liability or duty imposed herein or which purports to waive the rights and liabilities granted under this Article, shall be void and unenforceable.

**Rights Consistent with Article Undiminished**

Sec. 6. Nothing in this Article shall serve to affect or diminish any of the rights of the landlord or tenant under contract, statute, or common law which are consistent with the provisions hereof.

[Acts 1973, 63rd Leg., p. 1226, ch. 441, § 2, eff. Sept. 1, 1973.]

**Art. 5236d. Landlord's Lien for Rent**

**Lien on Property for Unpaid Rent**

Sec. 1. The operator of any residential house, apartment, duplex, or other single or multi-family dwelling, shall have a lien upon all property found within the tenant's dwelling and upon all property stored by the tenant within a storage room for all rentals due and unpaid by the tenant, except that property specifically exempted hereinafter.

**Exemptions**

Sec. 2. Notwithstanding any other statute to the contrary, there shall be exempt from the lien set out in Section 1 above, the following:

- (1) all wearing apparel,
- (2) all tools, apparatus and books belonging to any trade or profession,
- (3) school books,
- (4) one automobile and one truck,
- (5) family library and all family portraits and pictures,
- (6) household furniture to the extent of one couch, two living room chairs, dining table and chairs,
- (7) all beds and bedding,
- (8) all kitchen furniture and utensils,
- (9) all food and foodstuffs,
- (10) all medicine and other medical supplies,
- (11) all goods known by the landlord or his agent to belong to persons other than the tenant or other occupants of such dwelling,
- (12) all goods known by the landlord or his agent to be subject to a recorded chattel mortgage lien or financing agreement, and
- (13) all agricultural implements.

**Waiver of Rights, Liabilities or Exemptions Void and Unenforceable**

Sec. 3. Any provision of an oral or written rental agreement between the landlord and tenant which purports to waive or diminish the rights, liabilities, or exemptions granted herein, shall be void and unenforceable to the extent herein limited.

**Enforceability; Conspicuously Printed in Agreement**

Sec. 4. A contractual landlord's lien shall not be enforceable unless underlined or printed in conspicuous bold print in the rental agreement.

#### Unlawful Seizures of Property

Sec. 5. It shall be unlawful for any landlord or his agent to seize any property exempt under Section 2 above, under any circumstances. It shall be unlawful for a landlord or his agent to seize any property not exempt under Section 2 above, unless pursuant to the terms of a written rental agreement between the landlord and the tenant.

#### Removal of Contents When Tenant has Abandoned Premises

Sec. 6. Nothing herein shall prevent a landlord or his agent from removing the contents of the premises when the tenant has abandoned the premises.

#### Remedies of Tenant; Damages; Attorneys Fees

Sec. 7. Upon willful violation of this Article by the landlord or his agent, the tenant may recover one month's rent, plus actual damages, plus reasonable attorneys fees, less any delinquent rentals or other sums for which the tenant is liable.

#### Rights Consistent with Article Undiminished

Sec. 8. Nothing in this Article shall serve to affect or diminish any of the rights of the landlord or tenant under contract, statute, or common law which are consistent with the provisions hereof.

[Acts 1973, 63rd Leg., p. 1227, ch. 441, § 3, eff. Sept. 1, 1973.]

### Art. 5236e. Security Deposits; Minimum Age for Entering Into Rental Agreements

#### Definitions

Sec. 1. As used in this Act:

(1) "Security deposit" means any advance or deposit of money, regardless of denomination, the primary function of which is to secure full or partial performance of a rental agreement for a<sup>1</sup> residential premises.

"Security deposit" does not include advance rentals.

(2) "Landlord" means the owner, lessor, or sublessor of a residential dwelling unit. "Landlord" also includes any legal entity shown as a managing agent or leasing agent on a written rental agreement.

(3) "Tenant" means any person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(4) "Premises" means a rental unit, apartments thereto, grounds and facilities held out for the use of the tenants generally, and any other area or facility whose use is promised to the tenant.

(5) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations, or any other provisions regarding the use and occupancy of a residential rental unit.

(6) "Normal wear and tear" means that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or his invitees or guests.

<sup>1</sup> So in enrolled bill.

#### Landlord's Obligation to Refund Security Deposit

Sec. 2. (a) Security deposits must be refunded by the landlord to the tenant within 30 days after the tenant surrenders the premises. A tenant shall give advance notice of surrender as may be required by the rental agreement. However, advance notice may not be a condition for refund unless the requirement of advance notice is underlined or printed in conspicuous, bold print in the rental agreement.

(b) The landlord shall keep accurate records of all security deposits. The tenant's claim to the security deposit shall be prior to any creditor of the landlord, excluding a trustee in bankruptcy.

#### Landlord's Obligation to Furnish Accounting of Security Deposit

Sec. 3. (a) In the event actual cause exists for retaining all or any portion of the security deposit, the landlord shall return to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. Such deductions shall be limited to damages and charges for which the tenant is legally liable under the rental agreement or as a result of breaching the rental agreement. No security deposit may be retained to cover normal wear and tear as defined in Paragraph (6), Section 1, of this Act. The burden of proving the reasonableness of such damages or charges shall be on the landlord.

(b) A landlord is not required to furnish a description and itemized list of deductions if there are any rentals due and unpaid at the time the tenant surrenders possession of the premises and there is no controversy over the amount of rentals due and unpaid.

#### Landlord's Failure to Comply

Sec. 4. (a) A landlord who in bad faith retains a security deposit in violation of this Act is liable for \$100 plus treble the amount of that portion of the deposit which was wrongfully withheld from the tenant, and shall be liable for reasonable attorneys fees in a lawsuit to recover the security deposit.

(b) A landlord who in bad faith fails to provide a written description and itemized list of damages and charges pursuant to the requirements of this Act, forfeits all rights to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises and is liable to the tenant for reasonable attorneys fees in a lawsuit to recover the security deposit.

(c) In any court action brought by a tenant under this Act, the landlord bears the burden

of proving that his retention of the security deposit or any portion thereof was reasonable. In this court action the landlord is not liable for the penalty, treble damages, or attorneys fees referred to in Subsections (a) and (b) of this section unless the landlord is found to have acted in bad faith. Failure to return a security deposit within 30 days or failure to provide a written description and itemization of deductions within 30 days is prima facie evidence and a presumption that the landlord acted in bad faith.

#### Cessation of Owner's Interest

Sec. 5. (a) On cessation of the owner's interest in the premises (whether by sale, assignment, death, appointment of a receiver, or otherwise), the new owner is liable for the return of security deposits pursuant to the terms of this Act, from the date title to the premises is acquired by the new owner. However, this subsection is not applicable to acquisition of title at foreclosure by real estate mortgage lien holders.

(b) On cessation of the owner's interest in the premises (whether by sale, assignment, death, appointment of a receiver, or otherwise), the owner remains liable for security deposits received by the owner or his agent until such time as the new owner or his agent has delivered to the tenant a signed statement, acknowledging that the new owner has received and is responsible for the tenant's security deposit. The acknowledgment shall specify the exact dollar amount of the tenant's security deposit.

#### Tenant's Obligation Regarding Security Deposit

Sec. 6. (a) The tenant shall furnish the landlord with a written copy of the tenant's forwarding address for purposes of security deposit refunding. A tenant's right to security deposit refund and description of damages and charges is never forfeited for mere failure to furnish a forwarding address to the landlord. Notwithstanding any other provision of this Act, a landlord is not obligated to return the security deposit or furnish a written description of damages and charges until the tenant has furnished the forwarding address.

(b) The tenant shall not withhold payment of the last month's rental, or any portion thereof, on grounds that the security deposit serves as security for the unpaid rentals. If a tenant in bad faith fails to abide by the requirements of this subsection, the tenant is liable to the landlord for treble the amount of the rentals wrongfully withheld and for reasonable attorneys fees in a lawsuit to recover the rentals. Withholding a portion of the last month's rental on grounds that the security deposit serves as security for the unpaid rentals, is prima facie evidence and a presumption that the tenant acted in bad faith.

#### Waiver of Rights Void

Sec. 7. Any provision of an oral or written rental agreement between the landlord and ten-

ant which purports to exempt the landlord or tenant from any liability or duty imposed by this Act or which purports to waive the rights and liabilities granted under this Act, is void and unenforceable.

#### Other Rights Not Affected

Sec. 8. Nothing in this Act shall affect or diminish any of the rights of the landlord or tenant under contract, statute, or common law which are consistent with provisions of this Act.

#### Minimum Age

Sec. 9. Except where specifically exempted by the constitution or statutes of this state, a person 18 years of age or older has the legal capacity to enter into a binding written rental agreement or written security deposit agreement for residential property, and shall be bound by all the provisions of this Act.

#### Laws in Conflict

Sec. 10. All laws in conflict herewith are repealed to the extent of the conflict.

#### Effective Date

Sec. 11. This Act shall take effect on September 1, 1973, and shall apply to all residential rental agreements executed or entered into after that date.

#### Saving

Sec. 12. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision or application.

[Acts 1973, 63rd Leg., p. 1182, ch. 433, eff. Sept. 1, 1973.]

#### Art. 5237. Tenants Shall Not Sub-let

A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney.

[Acts 1925, S.B. 84.]

#### Art. 5238. Owners of Buildings Lien

All persons leasing or renting any residence, storehouse or other building, shall have a preference lien upon all property of the tenant or of any subtenant of such tenant in such residence, storehouse or other building, for the payment of rents due and to become due provided that in order to secure the lien for rents that are more than six (6) months due, it shall be necessary for the person leasing or renting any storehouse or other building which is used for commercial purposes, to file in the office of the county clerk of the county in which such storehouse or such other building is situated, a sworn statement of the amount of rent due,

itemized as to the months for which it is claimed to be due, together with the name and address of the tenant and/or subtenant, a description of the rented premises, the date on which the rental contract began and that on which it is to terminate, verified by the person claiming such lien, his agent or attorney, and such statement when so verified shall be recorded by the county clerk in a book to be provided for such purpose. No lien for rent more than six (6) months past due upon any storehouse or other building rented for commercial purposes shall be valid as against bona fide purchasers or unsecured or lien creditors of said tenant and/or subtenant, unless said statement shall be verified, filed and recorded as above provided.

Each county clerk shall keep an alphabetical index for the purpose of recording the rental liens above described. The lien for rents to become due shall not continue or be enforced for a longer period than the current contract years, it being intended by the term "current contract years" to embrace a period of twelve (12) months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rental premises, and for one (1) month thereafter; but this Article shall not be construed as in any manner repealing or affecting any Act exempting property from forced sale.

[Acts 1925, S.B. 84; Acts 1933, 43rd Leg., p. 282, ch. 112.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5238a. Repealed by Acts 1973, 63rd Leg., p. 1228, ch. 441, § 5, eff. Sept. 1, 1973

The repealed article, authorizing a baggage lien for rent, was derived from Acts 1969, 61st Leg., p. 2008, ch. 686.

See, now, article 5236d.

#### Art. 5239. Distress Warrant

When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant and the same rights conferred on the owners of storehouses and residences as is provided in this title in cases of other landlords.

[Acts 1925, S.B. 84.]



## TITLE 85

### LANDS—ACQUISITION FOR PUBLIC USE

#### 1. STATE USE

##### Article

- 5240. Mode of Acquisition.
- 5241. State Railroad.

#### 2. FEDERAL USE

- 5242. Authorized Uses.
- 5243. Condemnation Proceedings.
- 5244. Immediate Occupancy.
- 5244a. Municipal Corporations and Political Subdivisions or Districts; Conveyances to United States in Aid of Navigation, Flood Control, etc.; Prior Conveyances Validated.
- 5244a-1. Highway Commission Authorized to Grant Easements or Interests in Land to United States for Flood Control in Counties Near Mexican Boundary.
- 5244a-2. Commissioners' Courts Authorized to Convey Land to United States for Flood Control Near Mexican Boundary.
- 5244a-3. Conveyance of State Land or Interest in Land to United States for Civil Works Projects.
- 5245. State Land.
- 5246. To Record Title.
- 5247. Federal Jurisdiction.
- 5248. Exempt From Taxation.
- 5248a. Granting Easement to the United States in Certain Lands.
- 5248b. Granting Easement to United States for Louisiana and Texas Intracoastal Waterway.
- 5248c. Counties Authorized to Convey Lands to the United States.
- 5248c-1. Conveyance of County Land or Interest in Land to United States for Military Installation.
- 5248c-2. Conveyance of County Land or Interest in Land to United States for Civil Works Projects.
- 5248d. Lands Conveyed to the United States for Military Purposes.
- 5248d-1. Conveyance of Lands Under Control of State Highway Department to United States for Military Purposes.
- 5248e. Cities or Counties, Acting Separately or Jointly, May Acquire Lands for Use of United States Government; Contracts; Validation of Agreements.
- 5248f. Payments or Gifts in Lieu of Taxes by Federal Agencies.
- 5248g. Grant of Portions of Bed and Banks of Pecos, Devils and Rio Grande Rivers to United States.
- 5248h. Consent to Acquisition of Land for Flood Control.
- 5248i. Consent to Acquisition of Land in Trinity Watershed.

#### 1. STATE USE

##### Art. 5240. Mode of Acquisition

When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the

Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken.

[Acts 1925, S.B. 84.]

##### Art. 5241. State Railroad

If any land is acquired by purchase or condemnation to obtain right of way for any railroad or tram road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this State, or any of the farms of this State, and used in connection with the State penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs of condemnation, or the purchase price of said property.

[Acts 1925, S.B. 84.]

#### 2. FEDERAL USE

##### Art. 5242. Authorized Uses

The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cut-offs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law.

[Acts 1925, S.B. 84.]

##### Art. 5243. Condemnation Proceedings

Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner.

[Acts 1925, S.B. 84.]

##### Art. 5244. Immediate Occupancy

Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States,

they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court.

[Acts 1925, S.B. 84.]

**Art. 5244a. Municipal Corporations and Political Subdivisions or Districts; Conveyances to United States in Aid of Navigation, Flood Control, etc.; Prior Conveyances Validated**

Sec. 1. When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by resolution of its governing body may have heretofore agreed or may hereafter agree to acquire and convey the same, for ultimate conveyance to the United States of America and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

Sec. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby.

[Acts 1937, 45th Leg., p. 145, ch. 77.]

**Art. 5244a-1. Highway Commission Authorized to Grant Easements or Interests in Land to United States for Flood Control in Counties Near Mexican Boundary**

Whenever the State of Texas shall be the owner of any land, or interest in land, acquired for use as a right-of-way for any State highway in any County, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or in any county contiguous to any county of such described class, which is used or proposed to be used as a part of the site for flood control works, constructed or to be constructed by any such county or by the United States of America, for the purpose of controlling the flood waters of any navigable stream of this State, the State Highway Commission is hereby authorized and empowered, upon request by the United States through its proper officers, or upon the request of the County Judge of any such County, to convey to the United States of America, or to any such County, (which has agreed to convey said lands or interest therein to the United States pursuant to an Act of Congress), without monetary consideration therefor, an easement or interest in such land which may be necessary for the construction, operation, and maintenance of such works; and in the event the fee simple title to such lands is not vested in the State and the owner of the fee has executed an easement to such lands for flood control purposes, the Highway Commission is authorized and empowered to join in and assent to such easement. The State Highway Commission is authorized at its discretion to execute the necessary deeds, conveyances, or agreements for the purposes stated, to be signed by the Chairman pursuant to the order of the Commission, and all such conveyances and agreements heretofore made are hereby ratified and confirmed. The Commission may in lieu of the monetary consideration waived herein above, make such reservations and agreements as it deems necessary for the best interests of the State and its highway system, with reference to the alteration, construction, reconstruction, operation and maintenance of such structures and facilities now used, or hereafter to be used, for highway purposes in, upon, or across the lands, or interest therein, desired for flood control purposes.

[Acts 1939, 46th Leg., p. 480, § 1.]

**Art. 5244a-2. Commissioners' Courts Authorized to Convey Land to United States for Flood Control Near Mexican Boundary**

Sec. 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International

Boundary between the United States and Mexico, or any county contiguous to any such county, which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to secure by gift, purchase or by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for the same out of any special flood control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge, after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance to the United States. Said declaration shall contain and have annexed thereto—

- (1) A description of the land taken sufficient for the identification thereof.
- (2) A statement of the estate or interest in said land taken, and the public use to be made thereof.
- (3) A plan showing the lands taken.
- (4) A statement of the amount of damage awarded by the Special Commissioners or, by the jury on appeal for the taking of said land.

Sec. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk; subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall be deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said dec-

laration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall be the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose.

[Acts 1939, 46th Leg., p. 482.]

#### Art. 5244a-3. Conveyance of State Land or Interest in Land to United States for Civil Work Projects

##### Conveyances Authorized

Sec. 1. Whenever the State of Texas shall be the owner of any land or interest in land, which land or interest therein is under the control of the Texas Highway Department, and which land is used or proposed to be used as a part of the site of a flood control, river and harbor improvement, water conservation, or other civil works project constructed or to be constructed by the United States of America or an agency or instrumentality thereof, the Governor is hereby authorized and empowered, upon the recommendation of the State Highway Commission, or upon request by the United States through its proper officers when supported by the recommendation of the State Highway Commission, to convey to the United States of America or to any political subdivision, agency or instrumentality of this State which is cooperating with the United States in any such project, without monetary consideration therefor, or for a consideration determined by the State Highway Commission, an easement or other interest in such land which may be necessary for the construction, operation, and maintenance of such project.

##### When Fee Title is Not in the State

Sec. 2. In the event the fee simple title to such land is not vested in the State and the owner of the fee has executed an easement to such lands for the above purposes, the Governor is authorized and empowered upon the recommendation of the State Highway Commission to join in and assent to such easement by the same instrument or by separate instrument.

##### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the Governor upon the recommendation of the State Highway Commission for the purposes stated above are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 664, ch. 306.]

#### Art. 5245. State Land

When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to

the United States for such land in like manner as other patents are issued.

[Acts 1925, S.B. 84.]

#### Art. 5246. To Record Title

All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice.

[Acts 1925, S.B. 84.]

#### Art. 5247. Federal Jurisdiction

Whenever the United States shall acquire any lands under this title, and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession.

[Acts 1925, S.B. 84.]

#### Art. 5248. Exempt From Taxation

The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise; provided, however, that any personal property located on said lands which is privately owned by any person, firm, association of persons or corporation shall be subject to taxation by this State and its political subdivisions; and provided, further, that any portion of said lands and improvements which is used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the

conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions.

[Acts 1925, S.B. 84; Acts 1950, 51st Leg., 1st C.S., p. 105, ch. 37, § 1.]

#### Art. 5248a. Granting Easement to the United States in Certain Lands

Sec. 1. That there is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of constructing and maintaining the proposed Louisiana and Texas Intra-Coastal Waterway over and through disconnected portions of the stream beds of Mud Bayou and East Bay Bayou from approximately Station 1519 to approximately Station 1914 as shown on United States Engineer Department map, "Louisiana and Texas Intra-Coastal Waterway, Sabine River-Galveston Bay Section, Survey of 1926-7, Sheet No. 12, File 16-2-16," the said portions of the stream beds of Mud Bayou and East Bay Bayou covered by this easement being 300 feet wide and located in Chambers and Galveston Counties where the proposed Intra-Coastal Waterway will intersect the meanderings of the bayous.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intra-Coastal Waterway prior to January 1, 1939, or should said Government cease to maintain or to have maintained said Intra-Coastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights, or the right to use and maintain any bridge or bridges now in existence on or across said Mud Bayou, or East Bay Bayou, and the right of the owner of any such bridge to use and maintain the same is hereby expressly recognized and confirmed.

[Acts 1929, 41st Leg., 1st C.S., p. 175, ch. 66.]

#### Art. 5248b. Granting Easement to United States for Louisiana and Texas Intracoastal Waterway

Sec. 1. There is hereby granted and conveyed to the United States of America the free and uninterrupted use, liberty, and easement to construct and maintain the Louisiana and Texas Intracoastal Waterway over and through disconnected portions of bays and any tidal lands owned by the State of Texas within an area three hundred (300) feet in width extending from the Galveston-Brazoria County line to the nine-foot contour in Aransas Bay along the route of the projected Louisiana and Texas Intracoastal Waterway as shown in red on map, in four (4) sheets, prepared by the United States Engineer Office, Galveston, Texas, entitled "Louisiana and Texas Intracoastal Waterway, Survey of 1927-1928," Index Sheets Nos. 1, 2, 3, and 4, File No. 16-4-4, and the further free and uninterrupted use, liberty,

and easement to deposit dredged material during construction and maintenance of the waterway in bays and on tidal lands owned by the State of Texas within two thousand (2,000) feet of the above described area, said portions of bays and tidal lands being located in Brazoria, Matagorda, Calhoun, and Aransas Counties.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intracoastal Waterway prior to January 1, 1947, or should said Government cease to maintain or to have maintained said Intracoastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights.

[Acts 1937, 45th Leg., p. 801, ch. 393.]

#### Art. 5248c. Counties Authorized to Convey Lands to the United States

Sec. 1. Any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

Sec. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

Sec. 3. All proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provide for the conveyance of a part or parts of any plot of ground such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

Sec. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose of serving all State criminal and civil process.

[Acts 1939, 46th Leg., p. 138.]

#### Art. 5248c-1. Conveyance of County Land or Interest in Land to United States for Military Installation

##### Conveyance Authorized

Sec. 1. Whenever the county shall be the owner of any land or interest in land, which land or interest therein is under the control of the county and is near any federally owned or operated military installation or facility, the County Judge is hereby authorized and empowered upon an order of the Commissioners Court or upon request by the United States through its proper officers when supported by an order of the Commissioners Court to convey to the United States of America without monetary consideration therefor, or for a consideration determined by the Commissioners Court, an easement or other interest in such land which may be necessary in connection with the construction, operation, and maintenance of such military installation or facility.

##### When Fee Title is Not in the County

Sec. 2. In the event the fee simple title to such land is not vested in the county and the owner of the fee has executed an easement to such lands for such purposes, the County Judge is authorized and empowered upon an order of the Commissioners Court to join in and assent to such easement by the same instrument or by a separate instrument.

##### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the County Judge or Commissioners Court upon an order of the Commissioners Court for the above purposes are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 273, ch. 148.]

#### Art. 5248c-2. Conveyance of County Land or Interest in Land to United States for Civil Works Projects

##### Conveyances Authorized

Sec. 1. Whenever the County shall be the owner of any land or interest in land, which land or interest therein is under the control of the said County, and which land is used or proposed to be used as a part of the site of a flood control, river and harbor improvement, water conservation, or other civil works project constructed or to be constructed by the United States of America or an agency or instrumentality thereof, the County Judge is hereby authorized and empowered upon an order of the Commissioners Court, or upon request by the United States through its proper officers when supported by an order of the Commissioners Court, to convey to the United States of Ameri-

ca or to any political subdivision, agency or instrumentality of this State which is cooperating with the United States in any such project, without monetary consideration therefor, or for a consideration determined by the Commissioners Court, an easement or other interest in such land which may be necessary for the construction, operation, and maintenance of such project.

**When Fee Title is Not in the County**

Sec. 2. In the event the fee simple title to such land is not vested in the County and the owner of the fee has executed an easement to such lands for the above purposes, the County Judge is authorized and empowered upon an order of the Commissioners Court to join in and assent to such easement by the same instrument or by separate instrument.

**Former Conveyances Ratified**

Sec. 3. All such conveyances heretofore made by the County Judge or Commissioners Court on an order of the Commissioners Court for the purposes stated above are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 274, ch. 149.]

**Art. 5248d. Lands Conveyed to the United States for Military Purposes**

Sec. 1. There is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of, in, and to that certain area three (3) miles square or larger, or of different form, in Nueces County Navigation District, in Nueces Bay, in Nueces County, Texas, as the proper agent or agents of the United States Government may designate for the erection and maintenance of forts, military stations or camps, magazines, arsenals, dock yards, barracks, lighthouses, navy yards, naval bases, naval air bases, naval air stations, channels, approaches for battleships, or for other needful military purposes.

Sec. 2. If the United States of America shall not desire to utilize said area for said purposes or any of said purposes, and shall fail or refuse to erect said forts, military stations or camps, barracks, naval bases, naval air bases or stations, or other needful military purposes, prior to January 1, 1949, or should said Government cease to maintain or to have maintained said forts, military stations or camps, barracks, naval bases, naval air bases or stations, channels and approaches, at any time, then the right of easement, use, and liberty herein granted shall cease and determine, and all right of whatsoever nature by virtue hereof shall revert and be re-vested in the State of Texas.

Sec. 3. If and when the proper authority or agent of the United States of America may demand, the Governor of the State of Texas shall convey said area to the Government of the United States of America for the purposes herein set forth. The use, liberty, and ease-

ment herein authorized shall be upon the express condition that the State of Texas shall retain all of the oil and gas and mineral rights, and that the State of Texas shall convey said public domain to the United States of America under the limitation in Articles 8225, 5242, 5245, and 5247 of the Revised Civil Statutes of Texas, and such approval and authorization of the Legislature of the State of Texas is hereby given.

[Acts 1939, 46th Leg., Spec.Laws, p. 546.]

**Art. 5248d-1. Conveyance of Lands Under Control of State Highway Department to United States for Military Purposes**

**Conveyances Authorized**

Sec. 1. Whenever the State of Texas shall be the owner of any land or interest in land, which land or interest therein is under the control of the Texas Highway Department and is near any Federally owned or operated military installation or facility, the Governor is hereby authorized and empowered upon the recommendation of the State Highway Commission or upon request by the United States through its proper officers when supported by the recommendation of the State Highway Commission to convey to the United States of America without monetary consideration therefor, or for a consideration determined by the State Highway Commission, an easement or other interest in such land which may be necessary in connection with the construction, operation, and maintenance of such military installation or facility.

**When Fee Title is Not in the State**

Sec. 2. In the event the fee simple title to such land is not vested in the State of Texas and the owner of the fee has executed an easement to such lands for such purposes, the Governor is authorized and empowered upon the recommendation of the State Highway Commission to join in and assent to such easement by the same instrument or by a separate instrument.

**Former Conveyances Ratified**

Sec. 3. All such conveyances heretofore made by the Governor upon the recommendation of the State Highway Commission for the above purposes are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 1063, ch. 475.]

**Art. 5248e. Cities or Counties, Acting Separately or Jointly, May Acquire Lands for Use of United States Government; Contracts; Validation of Agreements**

**Authority to Acquire**

Sec. 1. Any city or county in the State, separately or jointly, is authorized to acquire lands for the use of the United States Government, either by a lease for a term of years or in fee simple title; said lands shall lie within the limits of the county acquiring same, or if

acquired by a city, within the limits of the county in which said city is located.

#### Appropriations; Warrants

Sec. 2. For the purpose of acquiring leasehold interest or fee simple title to lands for the use of the United States Government, authorized above, the said city or county is authorized to appropriate any available funds and also to issue time warrants in payment thereof; provided, however, that in the event time warrants are proposed to be issued, the provisions of Article 2368-a of the Revised Civil Statutes of the State of Texas shall be followed in the issuance of said time warrants.

#### Condemnation

Sec. 3. For the purpose of acquiring leasehold or fee simple estate in lands for the use of the United States Government, any city or county may condemn lands for such purpose, and said condemnation may be for any period of years or in fee simple title, and in the acquisition of said interest desired, said city or county may, immediately after filing condemnation suit, as now provided by law, take possession of said lands by depositing with the County Clerk the amount of money estimated by the Commissioners' Court or City Council of the city or county involved, to be the just compensation for the interest in the land taken. Said petition for condemnation shall set forth the amount of said money so found by the Commissioners' Court or City Council, to be just, and such finding shall be made by said body prior to the filing of the petition of condemnation. In the event the Special Commissioners appointed under the condemnation statutes, after a hearing as provided by law, find the just compensation to be greater than the amount fixed by the Commissioners' Court or City Council, then an additional amount shall be deposited with the County Clerk by the taking authority, so as to equal the amount found by the Commissioners. Condemnation may be in the name of the city or county and said city or county may at any time after the taking, which shall be from the date the deposit of the money estimated by the Commissioners' Court or City Council, or the date of deposit of the amount fixed by the Special Commissioners in the event the taking is not desired until after the Commissioners have acted thereon, transfer the interest acquired by the taking to the United States Government.

#### Contracts

Sec. 4. Any city or county may contract with the United States Government or its agencies obligating itself to acquire a leasehold interest, or fee simple title in land as above authorized and any agreement heretofore executed by any city or county with the United States Government binding itself to acquire interest in land for the Government is hereby validated.

#### Partial Unconstitutionality

Sec. 5. If any section, sub-section, sentence, clause or phrase of this Act shall be held un-

constitutional for any reason, such fact shall not affect the remaining portions hereof.

[Acts 1941, 47th Leg., p. 239, ch. 168.]

#### Art. 5248f. Payments or Gifts in Lieu of Taxes by Federal Agencies

Sec. 1. All moneys, funds, assets, or gifts authorized by Federal Statute to be paid to the State of Texas in lieu of taxes or as a gift by the Federal Public Housing Authority or any other Federal Agency, be and the same is hereby accepted by the State of Texas; that this acceptance applies to any such tenders, gifts, or offers, whether they be made in the past, present, or future.

Sec. 2. The Comptroller of Public Accounts is hereby directed and authorized to execute such instruments as may be proper or necessary to effect the acceptance of such moneys, gifts, or assets, and when so received by the Comptroller, he shall deposit same in the State Treasury to the credit of the General Revenue Fund.

Sec. 3. The Comptroller may direct that such moneys, when so paid by the Federal Public Housing Authority, be remitted through the county tax assessor-collector in the county where lands are located on which the payment or tender is made in lieu of taxes by such Federal Authority, and require the tax assessor-collector of such county to make remittance to the State Treasury in the same manner as he is now required to do when remitting for ad valorem taxes; but in no event shall any tax assessor-collector or any other county or state official be entitled to any fee for services in handling these funds.

[Acts 1945, 49th Leg., p. 198, ch. 151.]

#### Art. 5248g. Grant of Portions of Bed and Banks of Pecos, Devils and Rio Grande Rivers to United States

Sec. 1. The Governor of the State of Texas is hereby authorized to grant to the United States of America in accordance with the conditions hereinafter set out, such of those portions of the bed and banks of the Pecos and Devils Rivers in Val Verde County and the Rio Grande in Brewster, Cameron, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb and Zapata Counties as may be necessary or expedient in the construction and use of the storage and flood control dams and their resultant reservoirs, diversion works and appurtenances thereto, provided for in the Treaty between the United States of America and United Mexican States, concluded February 3, 1944.

Sec. 2. When the United States Commissioner, International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area which is deemed necessary or expedient for use under said Treaty, the Governor shall issue a grant for and on behalf of the State of Texas to the United States of America conveying to it the area described

in the application, which said grant shall reserve unto the State of Texas all minerals except rock, sand and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act subject to the proviso that the minerals so reserved to the state shall not be explored for, developed or produced in a manner which will at any time prevent or interfere with the operation or construction by the United States of America of any of the works described in Section 1 of this Act; and providing further, that prior to exploring for or developing such reserved minerals the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells. Successive applications may be made by the said United States Commissioner, and successive grants may be made to the United States of America by the Governor for and on behalf of the State of Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon such grants; provided, however, that nothing herein shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws of the State of Texas, of the private owners of land abutting the Pecos, Devils, and Rio Grande Rivers in the counties herein referred to. The authority herein granted to the Governor of the State of Texas extends only to the bed and banks of the Pecos, Devils, and Rio Grande Rivers to the extent that title to such bed and banks is by law vested in the State of Texas whether under the civil law, or common law, or court decisions of the State of Texas, or otherwise; provided, however, that any grant or grants made to the United States of America in accordance with this authority shall contain a reservation that in the event any part of the property so granted shall ever cease to be used for the purposes set out within this Act for a continuous period of five (5) years after the beginning of such use, the part or parts of said property which are not so used shall immediately and automatically revert to the State of Texas after the expiration of said five (5) year period.

[Acts 1949, 51st Leg., p. 902, ch. 483; Acts 1955, 54th Leg., p. 861, ch. 324, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 167, ch. 61, § 1.]

#### Art. 5248h. Consent to Acquisition of Land for Flood Control

Sec. 1. The consent of the State of Texas is hereby given to the acquisition by the United States by purchase, gift, or condemnation with adequate compensation, of such lands, or any right or interest therein, in Texas as in the opinion of the Government of the United States may be needed for programs and works of im-

provement for run-off and water-flow retardation and soil erosion prevention, or other purposes, in the interest of flood control, within the State. Provided, that such lands may be acquired subject to reservations of rights-of-way, timber, minerals, and easements; provided further, that one (1%) per cent of the purchase price be remitted per annum in lieu of taxes to the County and School Districts. Provided further, that nothing herein shall be construed as consenting to the acquisition of any lands by condemnation unless the apparent owner of such lands shall have consented to such acquisition; and provided further, that the State shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the State against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this Act had not passed.

Sec. 2. Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules and regulations of both a civil and criminal nature, and to provide punishment for the violation thereof, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this Act.

Nothing contained in this Act shall be applicable to any county or counties in Texas except the counties in the Trinity Watershed lying wholly within the 22nd Senatorial District.

[Acts 1949, 51st Leg., p. 1092, ch. 555.]

#### Art. 5248i. Consent to Acquisition of Land in Trinity Watershed

Sec. 1. The consent of the State of Texas is hereby given to the acquisition by the United States by purchase, gift, or condemnation with adequate compensation, of such lands, or any right or interest therein, in Texas, as in the opinion of the Government of the United States may be needed for programs and works of improvement for run-off and water-flow retardation and soil erosion prevention, or other purposes, in the interest of flood control, within the State. Provided that such lands may be acquired subject to reservations of rights-of-way, timber, minerals, and easements; provided further, that one (1%) per cent of the purchase price be remitted per annum in lieu of taxes to the County and School Districts. Provided further, that nothing herein shall be construed as consenting to the acquisition of any lands by condemnation unless the apparent owner of such lands shall have consented to such acquisition; and provided further, that the State shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the State against any person



charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this Act had not passed.

Sec. 2. Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules and regulations of both a civil and criminal nature, and to provide punishment for the violation thereof, as in its judgment may be necessary for the administration, control

and protection of such lands as may be from time to time acquired by the United States under the provisions of this Act.

Nothing contained in this Act shall be applicable to any county or counties in Texas except that portion of the Trinity Watershed lying within Cooke, Grayson, Fannin, Collin, Hunt, Rockwall, Kaufman, Van Zandt, Dallas and Tarrant Counties.

[Acts 1950, 51st Leg., 1st C.S., p. 88, ch. 25.]

# TITLE 86

## LANDS—PUBLIC

Chapter	Article
1. Administration .....	5249
2. Surveyors and Surveys .....	5268
3. Surface and Timber Rights .....	5306
4. Oil and Gas .....	5338
5. Minerals [Repealed]	
6. Patents .....	5404
7. General Provisions .....	5415

### CHAPTER ONE. ADMINISTRATION

#### 1. THE COMMISSIONER

Article	
5249.	Election.
5250.	Bond.
5251.	General Duties.
5252.	Abstract Clerk.
5253.	Repealed.
5254.	May Print Abstracts.
5254a.	Revision and Compilation of Abstracts of Patented, Titled and Surveyed Land.
5255.	Chief Clerk.
5256.	Spanish Translator.
5257.	Receiving Clerk.
5258.	Examination of Books.
5259.	Draftsmen.
5260.	Conditions of Employment.
5260a.	Additional Clerks.

#### 2. GENERAL LAND OFFICE

5261.	Office Established.
5262.	Custody of Records.
5263.	Filing Papers.
5264.	Public Access to Papers.
5265.	Removal of Papers.
5266.	Receipts for Papers.
5267.	Liability of Commissioner.

#### 1. THE COMMISSIONER

##### Art. 5249. Election

The Commissioner of the General Land Office, hereinafter called the Commissioner, shall be elected at each general election for a term of two years, and shall reside at Austin during his continuance in office.

[Acts 1925, S.B. 84.]

##### Art. 5250. Bond

The Commissioner shall give bond with three or more sureties for fifty thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful discharge of his official duties. All other bonds required by law of employees of the General Land Office shall be executed and approved in like manner.

[Acts 1925, S.B. 84.]

##### Art. 5251. General Duties

The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and

execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required.

[Acts 1925, S.B. 84.]

##### Art. 5252. Abstract Clerk

The Commissioner shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent.

[Acts 1925, S.B. 84.]

##### Art. 5253. Repealed by Acts 1945, 49th Leg., p. 61, c. 42, § 1

##### Art. 5254. May Print Abstracts

The Commissioner of the General Land Office may have not more than fifteen hundred (1500) copies of said Supplementary Abstracts of patented, titled and surveyed lands printed and bound annually for distribution among those officers of the state and counties whose duties require its use, the surplus copies to be sold at a reasonable price to parties applying for them. The costs so incurred shall be paid out of the General Land Office appropriation for printing, and the Commissioner of the General Land Office shall pay all money received from such sales into the Treasury to the credit of the General Revenue Fund.

[Acts 1925, S.B. 84; Acts 1945, 49th Leg., p. 61, c. 42, § 1.]

##### Art. 5254a. Revision and Compilation of Abstracts of Patented, Titled and Surveyed Land

Sec. 1. The Commissioner of the General Land Office shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed land, which have heretofore been made by this office. The various counties of the state shall be apportioned into appropriate districts not to exceed eight (8) in number for the purpose of revising and compiling said abstracts, and all of the abstracts of each particular district shall be compiled into a separate volume. The Commissioner shall be authorized to distribute to those officers of the state requiring its use and who have not heretofore received a set, one complete set of abstract volumes of patented, titled

and surveyed lands in this state, and shall have the authority to sell the surplus volumes to persons applying for them at a price not less than their cost to the state. All moneys so received from the sale of such surplus volumes shall be deposited in the General Revenue Fund of the state.

Sec. 2. The Commissioner may cause to be printed a sufficient number of volumes to meet the demand. All such printing and binding is to be done within the State of Texas.

Sec. 3. Nothing contained herein shall affect the laws pertaining to the preparation, printing, and distribution of supplementary abstract volumes.

[Acts 1941, 47th Leg., p. 465, ch. 291; Acts 1957, 55th Leg., p. 828, ch. 356, § 1; Acts 1959, 56th Leg., p. 535, ch. 238, § 1.]

#### Art. 5255. Chief Clerk

The Commissioner shall appoint a chief clerk who shall give bond in the sum of twenty thousand dollars. He shall be authorized to perform all of the duties required of the Commissioner in case of his sickness, absence, death or resignation.

[Acts 1925, S.B. 84.]

#### Art. 5256. Spanish Translator

The Commissioner shall appoint a translator who shall thoroughly understand Spanish and English languages, who shall give bond as required of the chief clerk, and take the official oath. He shall translate into English and record in a book all laws and public contracts relating to titles of lands, and all original titles or papers relating thereto on file in the General Land Office, which are written in the Spanish language.

[Acts 1925, S.B. 84.]

#### Art. 5257. Receiving Clerk

With the consent of the Governor, the Commissioner shall appoint a suitable person as receiving clerk for the Land Office. Such person shall give bond in the sum of twenty-five thousand dollars. The receiving clerk shall:

1. Receive all funds required by law to be paid to the Commissioner and give the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and if any funds are received of a general character in advance of fees and dues, it shall be so stated; and said clerk shall be responsible therefor to the State or individual.

2. Keep books in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books. He shall report to the Treasurer on the last day of each month all funds in his hands due the State, paying the same in kind and taking the receipt in

his own name. He shall keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in. Upon his removal or resignation, he shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the Commissioner, taking a receipt for the same.

3. Furnish the Governor, through the Commissioner, on or before the meeting of the Legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment.

[Acts 1925, S.B. 84.]

#### Art. 5258. Examination of Books

The Commissioner shall examine the books and accounts of the receiving clerk and note that they are properly kept, and if any defalcation is found he shall at once report the same to the Governor, who shall suspend said clerk from office until an examination is made, and if found guilty he shall be removed and suit instituted for recovery upon his bond.

[Acts 1925, S.B. 84.]

#### Art. 5259. Draftsmen

The Commissioner shall appoint a chief draftsman and such number of compiling or assistant draftsmen as authorized by law, who shall make out and complete maps of all surveys made in the several counties from the maps furnished by county surveyors; and they shall plot additional surveys upon the proper county maps as forwarded to the Land Office. They shall perform all drafting and other duties required of them by the Commissioner for the benefit of the State or individuals.

[Acts 1925, S.B. 84.]

#### Art. 5260. Conditions of Employment

The Commissioner shall appoint such number of clerks as authorized by legislative appropriation or other law of this state. All clerks and employees of the Land Office shall hold their offices and positions at the pleasure of the Commissioner, and may be removed by him at any time for satisfactory cause.

[Acts 1925, S.B. 84.]

#### Art. 5260a. Additional Clerks

The Commissioner of the General Land Office of the State of Texas be, and is hereby authorized to employ two additional clerks to be designated as Research and Sales Clerks, one of whom shall be a licensed lawyer and the other experienced in Land Office work, at a salary of Twenty-four Hundred (\$2400.00) Dollars each per year, to assist him in ascertaining vacant areas of land belonging to the Public Free School Fund of Texas and disposing of said areas, and to compile a record and assemble information for the State Board of Education.

[Acts 1935, 44th Leg., 1st C.S., p. 1652, ch. 422, § 1.]

## 2. GENERAL LAND OFFICE

**Art. 5261. Office Established**

There shall be one general land office at Austin, where all land titles emanating from the State shall be registered when not prohibited by the Constitution. The term "land office," as used in this title shall mean the General Land Office of this State.

[Acts 1925, S.B. 84.]

**Art. 5262. Custody of Records**

All books, accounts, records, papers, maps and original documents appertaining to land titles and which were termed archives by law, shall be the books and papers of said office, under the control and custody of the Commissioner. He shall keep in the Land Office a copy of each permit, lease or other paper issued by authority of law.

[Acts 1925, S.B. 84.]

**Art. 5263. Filing Papers**

The Commissioner shall adopt the most convenient method for filing papers and preserving the records of said office. A list of all papers in each file shall be retained in the file. Each employee who files a paper shall place his own name thereon.

[Acts 1925, S.B. 84.]

**Art. 5264. Public Access to Papers**

One desiring to examine any paper, record or file shall first obtain the written consent of the Commissioner or the chief clerk, and an order for the detail of a clerk to be present and superintend such examination. After the examination, the clerk shall carefully examine the papers of said file and see that they are all in place.

[Acts 1925, S.B. 84.]

**Art. 5265. Removal of Papers**

No transfer or deed that may be a link in any chain of title to any certificate on file in the Land Office shall be withdrawn by any one. The Commissioner shall deliver to the interested party on demand certified copies thereof which shall have the same force and effect as the originals. If the genuineness of any such original paper is questioned in any suit, the Commissioner shall deliver the same to the proper party on the order of the court where such suit is pending; and the Commissioner shall retain a duly certified copy thereof, which shall have the same force and effect as the original in the event of its loss.

[Acts 1925, S.B. 84.]

**Art. 5266. Receipts for Papers**

No paper, certificate, copy or document, other than a patent, shall be delivered to the owner until he has receipted for the same. The receipt shall state his residence and post office, and, if delivered to an agent or attorney, it shall also state his residence and post office. The Commissioner shall file such receipt with the other papers. When the Commissioner has

good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed.

[Acts 1925, S.B. 84.]

**Art. 5267. Liability of Commissioner**

The Commissioner and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said office, unless said Commissioner can show that such act has taken place by permission of the party owning said file or record.

[Acts 1925, S.B. 84.]

## CHAPTER TWO. SURVEYORS AND SURVEYS

## 1. LICENSED LAND SURVEYORS

## Article

- 5268. Board of Examiners.
- 5269. Organization of Board; Quorum; Meetings.
- 5270. Duties of Board.
- 5271. Examination.
- 5272. Seal of Licensee.
- 5273. License: Term of; Grounds of Revocation; Resignation.
- 5274. Revocation of License.
- 5275. Oath and Bond.
- 5276. Authority of Licensee.
- 5277. Field Notes to be Recorded.
- 5278. Undisclosed Land.
- 5279. Compensation.
- 5280. County Surveyor Alone Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records; Examination Fees.
- 5281. Disposition of Fees.
- 5282. Examinations and Licenses.

## 1A. REGISTERED PUBLIC SURVEYORS

- 5282a. Registered Public Surveyors Act of 1955.

## 2. COUNTY SURVEYORS

- 5283. Election.
- 5284. Bond.
- 5285. Deputy.
- 5286. Chain Carriers.
- 5287. Duties.
- 5288. Inclosed School Lands.
- 5289. Failure to Survey.
- 5290. To Record Field Notes.
- 5291. Record of Surveys.
- 5292. Right to Examine Books.
- 5293. Change of County Boundary.
- 5294. Lost Records.
- 5295. Standards of Measure.
- 5296. Removal: Delivery of Records.
- 5297. Custody of Records in Absence.
- 5298. Bound Records.
- 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900.

## 3. SURVEYS AND FIELD NOTES

- 5299. Authorized Surveys.
- 5300. Field Notes; Requisites.
- 5300a. Texas Co-ordinate System.
- 5301. Loss of Field Notes.
- 5302. Surveys on Navigable Streams.
- 5303. Division Line; Notice.
- 5304. Disputed Line; Trial.

## Article

5305. Incorrect Field Notes.  
 5305a. Validating Land Grants in Cities and Towns;  
 General Land Office Records Conclusive as to  
 Non-existence of Vacancies.

## 1. LICENSED LAND SURVEYORS

## Art. 5268. Board of Examiners

The Board of Examiners of State Land Surveyors shall be composed of the Commissioner of the General Land Office, who shall be Chairman, and two reputable Licensed State Land Surveyors of not less than fifteen year practical and active experience in the field as land surveyor, who shall be appointed by the Governor upon the recommendation of the Commissioner, and with the advice and consent of two-thirds ( $\frac{2}{3}$ ) of the Senate. At the time of such appointment the Governor shall designate one (1) member to serve a term of two (2) years and another a term of four (4) years from and after the date of appointment and thereafter one (1) member shall be appointed biennially for a term of four (4) years. Nothing in this Act shall affect or limit the terms of office of the present members of such board and they shall continue to hold such office until the expiration of the terms for which they have been appointed, and then the Governor shall make the two (2) and four (4) year appointments as provided herein.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

## Art. 5269. Organization of Board; Quorum; Meetings

Within thirty (30) days after the effective date of this Act, the Board shall meet in the General Land Office and elect one (1) of their number Secretary-Treasurer, who shall keep an accurate record of the proceedings of the Board, and a correct list of all persons licensed by the Board, and in addition shall keep an account of all receipts and expenditures of the Board. Such records shall be deposited in the General Land Office and become records of that office. Should the Board consider it advisable it may authorize the Commissioner to designate some employee of his office as assistant Secretary-Treasurer, who shall attend to all clerical work of the Board. The presence of two (2) members of the Board shall constitute a quorum for the transaction of any business, and the concurrence of two (2) members shall be necessary for the adoption or rejection of any question upon which they shall be called to pass.

The Commissioner, as Chairman of the Board, may call a meeting thereof at any time the accumulated business for the attention of the Board may warrant.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

## Art. 5270. Duties of Board

All applications for licenses shall be made to the Board in writing. The Board shall prepare

written questions upon the theory of surveying, practical surveying, theory and use of surveyor's instruments, calculation of areas, closing field notes, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the Board may deem important. Upon receipt of a written application for license the Board shall prepare written questions as herein provided and shall forward the same, together with the application, to the County School Superintendent of the county where the applicant resides, with suitable words on the enclosure indicating the contents, and the name and address of the applicant.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

## Art. 5271. Examination

Upon receipt of the questions by the County School Superintendent he shall hold the same unopened and shall notify the applicant of the time and place of the examination. The applicant shall appear at the time and place set, and the envelope containing the questions shall be opened in his presence only, and the examination shall be conducted in the same manner and under the same restrictions as required for teachers' certificates. Before taking the examination each applicant shall deposit with the County Superintendent the sum of Ten (\$10.00) Dollars, who shall retain Two (\$2.00) Dollars of said sum, said Two (\$2.00) Dollars shall be disposed of as are the fees paid by applicants for teachers' certificates. When the examination has been completed the examining authority shall return both questions and answers to the Chairman of the Board of Examiners of Land Surveyors, together with Eight (\$8.00) Dollars of the Ten (\$10.00) Dollars deposited by applicant.

When the questions prepared by the Board and the answers thereto shall have been returned to the Chairman of the Board as herein provided, he shall either convene the Board for the purpose of passing upon such answers and the issuance or refusal of the license, or he may transmit the questions and answers to the other members of the Board for their consideration and action, and shall issue a license to the applicant if he shall have passed a successful examination; provided, however, such license shall not issue until applicant has taken the oath of office and filed the bond as hereinafter required. Such questions and answers shall be deposited in the General Land Office and there safely kept for at least two years.

If a license be refused an applicant he may take any subsequent examination under the same conditions as in the first instance, and by the payment of the same fee, provided that such examination shall not be given before the expiration of at least six months after the preceding examination.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

**Art. 5272. Seal of Licensee**

Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his official title, and between the points of the star in said seal shall be the word "Texas." He shall attest with said seal all his official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records or the General Land Office unless certified to under the seal of such surveyor.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

**Art. 5273. License: Term of; Grounds of Revocation; Resignation**

A license issued to an applicant under these provisions shall be valid for life unless the licensee resigns as herein provided or the license is revoked by the Board for any of the following causes: That the holder has been found by a court of competent jurisdiction guilty of a felony or adjudged to have committed a theft, or fraud, or to be insane, or shall be found by the Board to be incompetent or to have unlawfully given information concerning any undisclosed public land or to have been directly or indirectly interested in the purchase or in the acquisition of title to any public land or to have been found by the Board guilty of any act or default discreditable to the surveying profession.

A licensed state land surveyor may resign as such surveyor at any time he may so desire by filing his resignation in writing with the Commissioner of the General Land Office. On receipt of such resignation the Commissioner shall cause to be made an entry on his records showing such act on the part of the licensee, and thereupon the duties of such licensee as a licensed state land surveyor shall cease, but such resignation shall not operate to relieve the principal and sureties of said surveyor's official bond of any liability that may have accrued prior to the effectiveness of such resignation.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

**Art. 5274. Revocation of License**

Before any license issued under these provisions shall be revoked, the holder thereof shall have been notified by registered mail notice from the Board addressed to him at his last known address, at least thirty (30) days before the day fixed for the hearing, stating the charges and the time and place for such hearing. The evidence adduced on such hearing shall be reduced to writing. If the Board finds the charges sustained by the evidence, the license of such surveyor shall be revoked. The surveyor whose license has been revoked may within sixty (60) days from the date the charges are sustained by the Board, appeal from such revocation to the District Court of Travis County. Such case may be carried to

the appellate courts, as in other cases, by either the Board or such surveyor. Upon such appeal the court shall admit in evidence the written record of the Board together with such other evidence as may be offered on either side in accordance with the rules of evidence in such courts.

[Acts 1924, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

**Art. 5275. Oath and Bond**

Before a surveyor's license issues, and before one who has successfully passed the examination as provided in this Act<sup>1</sup> shall be authorized to perform the duties of a Licensed State Land Surveyor, he shall take the official oath and shall make a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars, payable to the Governor, conditioned that he will faithfully, impartially and honestly perform all the duties of a Licensed State Land Surveyor to the best of his skill and ability in all matters wherein he may be employed. No surveyor's license shall be issued hereunder to any person residing outside the State of Texas.

Such bond may be executed by two (2) or more solvent personal sureties, or by some solvent surety company authorized to transact business in this State. Should the bond be signed by personal sureties each shall take and subscribe to an oath that he is worth over and above all debts and exemptions at least double the penalty of the Bond. Such personal bond shall also be approved by the Commissioners' Court of the County where the applicant resides. After the oath and bond have been executed as herein provided they shall be recorded in the office of the County Clerk of the county in which the applicant resides, and after being so recorded shall be filed in the General Land Office, accompanied with One (\$1.00) Dollar filing fee, and thereupon a license shall be issued to applicant and he shall be authorized to enter upon the discharge of the duties of a licensed State land surveyor. If for any reason the liability on the bond herein provided for shall be terminated, said licensee shall not be authorized to perform the duties of a licensed State land surveyor until a new bond is made as in the first instance. No surety on such bond, however, shall be relieved of liability thereon without first giving the Governor and the Commissioner of the General Land Office thirty (30) days notice in writing. The termination of said bond as herein provided, or the revocation of such surveyor's license, shall not relieve the sureties thereon from any liability that may have theretofore accrued thereon.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

<sup>1</sup>Evidently means the amendatory act, arts. 5268 to 5282.

**Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that*

*all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5276. Authority of Licensee

Land surveyors licensed under this Act<sup>1</sup> are hereby authorized to perform the duties that may be performed by the county surveyors, and shall be subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be co-extensive with the limits of the State. They may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county, nor shall the election of a county surveyor for any particular county prevent any licensed State land surveyor from performing the duties of a surveyor in such county. All official field notes made by one licensed under this law shall be signed by such surveyor, followed by the designation: "Licensed State Land Surveyor."

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

<sup>1</sup> Arts. 5268 to 5282.

#### Art. 5277. Field Notes to be Recorded

The field notes and plats of every survey of public land made by any surveyor licensed under this Act<sup>1</sup> shall be recorded in the county surveyor's records of the county in which the land may be situated. The field notes and plats of public land made by any licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state shall have the same force and effect and be admissible in evidence the same as field notes made by a county surveyor.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

<sup>1</sup> Arts 5268 to 5282.

#### Art. 5278. Undisclosed Land

If a licensed State land surveyor shall discover any undisclosed tract of public land he shall not make known that fact to anyone except to such person as may have it enclosed, but he shall forward to the Commissioner of the General Land Office a report of the existence of such tract and the acreage therein, and its probable value.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

#### Art. 5279. Compensation

A licensed State land surveyor shall receive as compensation for his services such sums as may be mutually agreed upon between the surveyor and the interested party, including other

expenses incident to the survey, whether the same be a private person, a county, a court or the State.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg. p. 806, ch. 501, § 1.]

#### Art. 5280. County Surveyor Alone Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records; Examination Fees

In cases where a county has a County Surveyor, such Surveyor alone shall be authorized to file and record field notes and plats of all surveys made in his county, and other documents subject by law to being recorded in the County Surveyor's records, and issue Certificates of Fact and certify the correctness of copies of any document or record or entry shown by the records of a County Surveyor, provided, however, that when a County Surveyor or his authorized deputy or deputies are absent from his office, the County Clerk of the county shall have free access to the County Surveyor's Office and public records, and shall, in such event, be authorized to record field notes, plats, and other documents subject to being recorded in the County Surveyor's records, and issue Certificates of Fact and certify the correctness of copies of any document or record or entry shown on the official records of the County Surveyor; and provided further that in cases where a county has no County Surveyor, the County Clerk of the county shall be the legal custodian of the Surveyor's records, and is authorized to make all such certificates and certify such copies as a legally authorized County Surveyor may make.

The fees for recording documents in the Surveyor's records and issuing certificates and making certified copies shall be such as are now provided by law. The County Surveyor shall be entitled to fees for all documents recorded by him or his deputies, and for all certificates and certified copies issued by him or his deputies, and the County Clerk shall be entitled to all fees for documents recorded by him and for all certificates and certified copies issued by him under the provisions of this law.

All licensed State Land Surveyors shall, for the purpose of information and examination, have access to the records of County Surveyors, and no examination fees shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regulating the sale or lease of the same or of identifying and establishing the boundaries thereof. All examinations shall be made under such regulations as may be provided by the County Surveyor or the Commissioners Court for the safe-keeping and preservation of the records. Examination fees for other purposes shall not exceed One Dollar (\$1) an hour, and fees for copies shall not exceed Thirty-five (35) Cents for one hundred words.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1; Acts 1943, 48th Leg., p. 213, c. 133, § 1.]

**Art. 5281. Disposition of Fees**

The sums received by the Board or so much thereof as may be necessary may be used to defray the actual expense incurred by the members of said Board in the execution of this law, and other expense necessary for the proper administration hereof, and the remainder shall be deposited annually in the State Treasury to the credit of the General Revenue Fund. No appropriation shall ever be made to defray the expenses of said Board or to carry into effect the provisions of this law.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

**Art. 5282. Examinations and Licenses**

No person shall be authorized to perform the duties of a licensed State Land Surveyor without first standing and passing the examination herein provided for, and obtaining a license as provided by this Act.<sup>1</sup>

Provided, however, that no Surveyor holding a license as a "Licensed State Land Surveyor" issued under former law shall be required to stand and pass the examination provided for by this Act, and the authority of such Surveyor to act as a "Licensed State Land Surveyor" shall not be questioned by reason of his failure to stand and pass said examination.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 806, ch. 501, § 1; Acts 1943, 48th Leg., p. 213, ch. 133, § 2.]

<sup>1</sup> Arts. 5268 to 5282.

**1A. REGISTERED PUBLIC SURVEYORS****Art. 5282a. Registered Public Surveyors Act of 1955****Name**

Sec. 1. This Act may be cited as the Registered Public Surveyors Act of 1955.

**Definitions**

Sec. 2. (a) Registered Public Surveyor. A registered Public Surveyor is a person engaged in the practice of Public Surveying as defined in this Act, and who is registered as provided for herein.

(b) Public Surveying and Public Surveyor. Public Surveying is the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public generally for compensation, and comprises the determination by means of survey, of the location or relocation of land boundaries and land boundary corners; the calculation of area and the preparation of field note description of surveyed land; the preparation of maps showing the boundaries and areas of the subdivision of tracts of land into smaller tracts; the preparation of official plats or maps of said land and subdivisions in compliance with the laws of the State of Texas and the political subdivisions thereof; and such other duties as sound surveying practice would direct.

A public Surveyor is any person engaged in public surveying as defined in this Act, and

who is employed as a surveyor or who holds himself out to the public as such.

(c) Person. The term "person" means a natural person except where otherwise specifically indicated.

(d) Board. The term "Board" shall mean the State Board of Registration for Public Surveyors as created and provided for in this Act.

(e) Secretary. The term "Secretary" shall mean the Executive Secretary of the Board as herein provided for.

**Exemptions**

Sec. 3. The provisions of this Act shall not apply to any of the following:

(a) County Surveyor acting in his official capacity as authorized by law.

(b) Licensed State Land Surveyor when acting in his official capacity as authorized by law.

(c) Registered Professional Engineer when practicing his profession as authorized by law.

(d) Officer of a state, county, city or other political subdivision whose official duties include land surveying when acting in his official capacity.

(e) Deputy, assistant or employee of any person exempted from the provisions of this Act by subsections (a), (b) and (c) of this Section when acting under the direction and supervision of such exempted person.

(f) Assistant or employee of any Public Surveyor registered under the provisions of this Act while acting under the direction and supervision of such Registered Public Surveyor.

**State Board of Registration for Public Surveyors**

Sec. 4. There is hereby created a State Board of Registration for Public Surveyors, which Board shall consist of six (6) members, each of whom shall be a citizen of the United States and a resident of this State. Members of the Board and their successors shall be appointed by the Governor, with the advice and consent of the Senate, and shall be surveyors in public practice, of good moral character, and actively engaged for at least ten (10) years in the said profession, in Texas, immediately prior to said appointment, two (2) years of which may be credited for graduation from an approved engineering or surveying school. The teaching of surveying in a recognized school of engineering or surveying may be regarded as the practice of surveying. Members of the first Board shall be appointed within ninety (90) days after this Act becomes effective to serve the following terms: two (2) members for two (2) years, two (2) members for four (4) years, and two (2) members for six (6) years, from the date of their appointment or until their successors are duly appointed and qualified. Thereafter, at the expi-



ration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office, each member of the Board shall take and subscribe to the Constitutional Oath of Office and the same shall be filed with the Secretary of State. Each member of the Board first appointed hereunder shall receive a certificate of registration under this Act. Upon the death, resignation or removal of any member of the Board, the Governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the Board. Any member may be removed by the Governor for official misconduct, gross inefficiency or moral unfitness.

#### Power and Duties of the Board

Sec. 5. The Board shall have the authority and power to make and enforce all rules and regulations necessary to the performance of its duties, to establish standards of conduct and ethics for public surveyors in keeping with the purposes and intent of this Act or to insure compliance with and enforcement of this Act. The violation by any surveyor of any provision of this Act or any rule or regulation of the Board shall be sufficient reason or ground to suspend or revoke the certificate of registration of such surveyor. In addition to any other action, proceeding, or remedy authorized by law, the Board shall have the right to institute an action in its own name against any person to enjoin any violation of this Act or any rule or regulation of the Board and in order for the Board to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does exist, or that substantial or irreparable damage would result from the continued violation thereof. An injunction suit may be brought in the district court of Travis County. Either party may appeal the decision of the district court. The Board shall not be required to give an appeal bond in any cause arising under this Act. The Attorney General shall represent the Board in all actions and proceedings to enforce the provisions of this Act.

At its first meeting it shall elect one (1) of its members as Chairman of the Board, and he shall serve as such Chairman for such length of time, not exceeding his term as member of the Board, as the Board may prescribe. The Board may, for good cause and after hearing, remove a Chairman, but such removal as Chairman shall not affect the right of such member to serve on the Board for the remainder of his appointed term. Upon the death, resignation or removal of a Chairman, the Board shall elect a successor from among its members. Four (4) members of the Board shall constitute a quorum for the transaction of any of its business, and a majority of those present at any meeting may decide any question before the Board, provided, however, that the Chair-

man of the Board may not be removed as Chairman except by a vote of two-thirds ( $\frac{2}{3}$ ) of the members of the Board at a meeting called for that purpose. The Board may adopt such reasonable rules and regulations for the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

The first Board appointed under the provisions of this Act shall hold its first meeting within thirty (30) days after the members have been qualified and shall hold at least two (2) regular meetings each year at such time and place as the Chairman may designate. It may hold special meetings at such times and places as a majority thereof may deem necessary after giving reasonable notice thereof to all the members. The Board is authorized to employ an Executive Secretary who shall devote full time to his work and shall have such duties and responsibilities as the Board may prescribe. The Board is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salaries of the Secretary and all other employees of the Board shall be fixed by the Board, and shall be paid out of the Registered Public Surveyors' Fund as provided for in this Act. All salaries paid by the Board shall be reasonably comparable in amount to salaries paid by other departments of the state government to employees engaged in similar capacities. All persons employed by the Board shall hold their positions at the pleasure of the Board. Each member of the Board shall receive the sum of Twenty-Five Dollars (\$25.00) per day for each day he is actually engaged in the discharge of his duties as such member, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of such duties. All payments to Board members or employees, and all expenses of the administration of this Act, shall be paid out of the Registered Public Surveyors' Fund provided for herein, and no part of the expense of administering this Act shall ever be a charge against the General Funds of the State of Texas. The Board shall arrange for such suitable office space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expense. The Board shall, as of December 31, of each year after the passage of this Act, make a written report to the Governor accounting for all receipts and disbursements under this Act. A roster showing the names and places of business of all Registered Public Surveyors shall be prepared by the Secretary of the Board during the month of July of each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

#### Qualifications for Registration

Sec. 6. From and after January first following the effective date of this Act, no person except those exempted from the operation of

this Act as provided for in Section 3 hereof, shall engage or continue in the practice of Public Surveying as defined herein unless such person shall be registered as provided herein. The following classes of persons shall be qualified for registration:

(a) All persons residing in Texas and engaged in the practice of Public Surveying on the effective date of this Act, and who have been so engaged for five (5) years immediately preceding the effective date hereof, upon satisfactory showing to the Board of the moral and educational fitness of such person to continue in such practice. Applications to register under this subsection (a) of Section 6 must be filed within one (1) year after this Act becomes effective.

(b) All persons who can show to the satisfaction of the Board that they have had at least eight (8) years experience in land surveying in Texas of which at least two (2) years were in responsible charge of surveying work. Within the meaning of this subsection, two (2) years of basic engineering course in an accredited school or college shall be considered the equivalent of two (2) years of land surveying. Applicants to register under subsection (b) of Section 6 must be filed within five (5) years after this Act becomes effective.

(c) All persons who apply to take, and successfully pass, an examination given by the Board to determine the fitness and qualification of the person examined shall be qualified for registration. Such examination shall be written and oral, and shall be designed to reflect knowledge and ability on the part of the applicant, showing to the Board that he is qualified to be placed in charge of surveying work. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified to be admitted to examination as a public surveyor:

(1) The applicant is more than twenty-one (21) years of age.<sup>1</sup>

(2) The applicant is of good character and reputation.

(3) The applicant has satisfied one of the following educational and experience requirements:

(A) has successfully completed a full four (4) year course of study in land surveying or civil engineering at an accredited college or university leading to a bachelor's or higher degree and has a specific experience record of two (2) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, of a character indicating that the applicant was in responsible charge of the accuracy and cor-

rectness of the surveying work performed; or

(B) has successfully completed a full four (4) year course of study other than land surveying or civil engineering at an accredited college or university leading to a bachelor's or higher degree and has a specific experience of four (4) or more years as a subordinate to a registered public surveyor, or a person qualified in land surveying in the active practice of land surveying, of a character indicating the applicant was in responsible charge of the accuracy and correctness of the surveying work performed. The course of study shall have included not less than thirty-two (32) semester hours of study or its academic equivalent, in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences; or

(C) has successfully completed a course of study in land surveying or Board approved survey-related courses at an accredited college or university of thirty-two (32) semester hours of study, or its academic equivalent, and has a specific experience record of six (6) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, five (5) years of such experience shall be of a character indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying work performed; or

(D) is a graduate of an accredited high school and has a specific experience record of six (6) or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying, of a character indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying work performed. Applicants under this subsection without the college or university credits listed in Paragraph (A), (B), or (C) must show they have become self-educated in the surveying field.

An applicant desiring to register as a Public Surveyor shall file with the Board an application therefor in writing, accompanying the application with a registration fee, the amount having been determined by the Board but in no event to exceed Fifty Dollars (\$50). If the Board finds that the applicant is qualified to register as herein provided for, it shall issue to him a Certificate of Registration and assign to him a registration number which shall not there-

after be assigned to, nor used by any other surveyor. Such number shall be placed on the Certificate of Registration and recorded in the permanent records of the Board, and shall constitute the registration number of such surveyor and shall be used by him on all his official documents. The Certificate of Registration shall also show the full name of registrant and shall be signed by the Chairman and Secretary of the Board. If the Board finds that an applicant is not qualified to be registered at the time of making his application, but is qualified to take an examination, it shall set a time and name a place for the applicant to take such examination. Upon passing the examination to the satisfaction of the Board, the applicant shall be entitled to a Certificate of Registration as hereinabove provided.

Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be surveyors having personal knowledge of his surveying experience. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability which shall insure safety to the public welfare and property rights. A candidate failing an examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fee. Provided, that after the first re-examination, each candidate wishing further re-examinations shall submit a new application accompanied by a fee of Fifty Dollars (\$50) for each such re-examination.

All Certificates of Registration shall expire on the last day of the month of December, following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee to be set by the Board but not to exceed \$25.00. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten per cent (10%) for each month or

fraction of the month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee; and provided further that if such failure to renew shall continue for more than one (1) year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under the foregoing provisions of this section before being registered. All renewal certificates shall carry the same registration number as the original certificate. All original and renewal Certificates of Registration shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a Registered Public Surveyor so long as such certificate is valid and in force. Each registrant hereunder shall, upon receiving his Certificate of Registration, obtain a seal of the design authorized by the Board, bearing the registrant's name and number and the legend "Registered Public Surveyor"; plats, field notes and reports prepared by a registrant or under his direction shall be stamped with the said seal when filed with public authorities or delivered to a private client. It shall be unlawful for anyone to stamp or seal any document with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

<sup>1</sup> Acts 1973, 63rd Leg., p. 1723, ch. 626, classified as art. 5923b, changed the age of majority to eighteen.

#### Expiration Dates of Registrations; Proration of Fees

Sec. 6A. The board by rule may adopt a system under which registrations expire on various dates during the year, and the period allowed for reinstatement shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before December 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

#### Revocations and Reissuance of Certificates

Sec. 7. The Board shall have the power to revoke the Certificate of Registration of any registrant who is charged with and found guilty of:

- (a) The practice of any fraud or deceit in obtaining a Certificate of Registration.
- (b) Any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor.

In determining the truth of any such charges, the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the

person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearings at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information contained in the written charges to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges, the Board by a majority of its members shall find them to be true, it may enter an order revoking the Certificate of Registration of such registered public surveyor. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the District Court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a competent reporter, then the Board shall employ such reporter and, when so employed, he shall be the official reporter of the Board for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, a majority of the Board shall constitute a quorum.

When the Board has completed such hearing, it shall make a record of its findings and shall order and cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his Certificate of Registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his Certificate of Registration, in the District Court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the Certificate of Registration; said suit to be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the Board, which issues shall be tried de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

The Board, for equitable reasons it may deem sufficient, may reissue a Certificate of Registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such reissuance. A new Certificate of Registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three Dollars (\$3) shall be made for such issuances.

#### Violations and Penalties

Sec. 8. After the effective date of this Act, as defined in Section 6 hereof, any person who shall practice, or offer to practice, the profession of Public Surveying in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the Certificate of Registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining or assisting to obtain for another a Certificate of Registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be confined in jail for a period not exceeding three (3) months, or both. Each day of such violation shall be a separate offense.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Registered Public Surveyors' Fund; Deposits in Fund; Expenditures from Fund

Sec. 9. All sums of money paid to the Board under the provisions of the Act shall be deposited in the Treasury of the State of Texas and placed in a special fund to be known as the "Registered Public Surveyors' Fund," and such fund is hereby appropriated and made available to the Board created herein for expenditure in accordance with the provisions of this Act, up to August 31, 1957. After August 31, 1957, all expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the General Appropriation Bill, and at the beginning of each biennium thereafter all moneys then in such fund which are not then appropri-

ated shall be set over and paid into the General Revenue Fund.

#### Invalid Portions

Sec. 10. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional.

#### Repeal of Conflicting Legislation with Proviso

Sec. 11. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any laws affecting or regulating licensed state land surveyors or registered professional engineers, and such licensed state land surveyors or registered professional engineers in performing their duties or profession as such shall not be subject to the provisions of this Act; provided further that registration under this Act shall not of itself qualify the registrant to conduct surveys of Public Lands under the provisions of Article 5299, Revised Civil Statutes, nor to make any surveys, the field notes of which are to be filed in the General Land Office of Texas; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed or registered by the State or under its authority.

[Acts 1955, 54th Leg., p. 864, ch. 328; Acts 1967, 60th Leg., p. 952, ch. 420, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 173, ch. 71, § 1, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 628, ch. 266, § 24, eff. June 11, 1973; Acts 1973, 63rd Leg., p. 864, ch. 393, §§ 1, 2, eff. June 13, 1973.]

Section 3 of Acts 1973, 63rd Leg., p. 864, ch. 393, provided: "The provisions of Section 2 of this Act, relating to amending Subsection (c), Section 6, Chapter 328, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 5282a, Vernon's Texas Civil Statutes), shall become effective January 1, 1975."

## 2. COUNTY SURVEYORS

### Art. 5283. Election

A county surveyor shall be elected in each county at each general election for a term of two years. He shall reside in the county and keep his office at the courthouse or some suitable building at the county seat, the rent therefor to be paid by the commissioners' court on satisfactory showing that the rent is reasonable, the office necessary and that there is no available office at the courthouse.

[Acts 1925, S.B. 84.]

### Art. 5284. Bond

The county surveyor shall first give bond in such sum as the commissioners' court may fix, not less than five hundred nor more than ten thousand dollars, and conditioned that he will faithfully perform the duties of his office.

[Acts 1925, S.B. 84.]

### Art. 5285. Deputy

Each County Surveyor may appoint a Deputy Surveyor as he may deem necessary, and shall administer his official oath and take his bond in the sum of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), conditioned for the faithful performance of the duties of his office. The Deputy may do all acts authorized or required by law to be done by the County Surveyor.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 380, ch. 187, § 1.]

### Art. 5286. Chain Carriers

Each county surveyor may employ persons sixteen years of age or over as chain carriers or markers, and shall administer to each an oath to faithfully perform his duties as such in accordance with the instructions given him.

[Acts 1925, S.B. 84.]

### Art. 5287. Duties

Each county surveyor shall receive and examine all field notes of surveys made in said county upon which patents are to be obtained, and shall certify to the same according to law and record such field notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. The commissioners' court shall furnish him all necessary books of record.

[Acts 1925, S.B. 84.]

### Art. 5288. Inclosed School Lands

He shall report to the commissioners' court on the first Monday in June each year the number of sections of public school lands in his county inclosed during the past year, and the names of the persons controlling same, and the number of sections controlled by each person.

[Acts 1925, S.B. 84.]

### Art. 5289. Failure to Survey

If any county surveyor fails, neglects or refuses, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause such survey to be made within one month after such tender, he and his sureties shall be liable on his official bond to such injured parties in the amount of damages or injury said parties may sustain by reason of such neglect, refusal or failure.

[Acts 1925, S.B. 84.]

### Art. 5290. To Record Field Notes

Each county surveyor shall record in a well bound book all the surveys in his county, with the plats thereof that he may make, whether private or official. Such record shall be open to the inspection of the public. For such service the surveyor may charge in addition to the fees allowed by law for field work, twenty cents per hundred words for such record.

[Acts 1925, S.B. 84.]

**Art. 5291. Record of Surveys**

Each county surveyor shall quarterly plat upon the map of his county all surveys made during the preceding quarter and transmit sketches and field notes of same to the Commissioner. Such map shall be free to public inspection.

[Acts 1925, S.B. 84.]

**Art. 5292. Right to Examine Books**

Any person interested, for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any surveyor, on the payment of the fee fixed by law.

[Acts 1925, S.B. 84.]

**Art. 5293. Change of County Boundary**

When any county boundaries are changed the surveyor of the county from which territory may be so taken shall furnish the surveyor of the county including such territory with a complete copy of all the field notes of surveys made in the same.

[Acts 1925, S.B. 84.]

**Art. 5294. Lost Records**

Whenever the maps, field notes of surveys, or other records, or any part thereof of the surveyor's office shall from any cause be lost or destroyed, such surveyor shall obtain from the Commissioner a transcript of such lost records certified to as required by law, and which certified copy shall have the same force and effect as the original. Such surveyor shall receive five cents and the State ten cents per hundred words for such transcript to be paid by the commissioners court.

[Acts 1925, S.B. 84.]

**Art. 5295. Standards of Measure**

Each surveyor shall, in some convenient place at the county seat, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust to the said meridian all compasses or other such instruments before being used; and shall keep in his office a standard chain of the true measurement of ten varas, to which all of his chains shall be adjusted before being used. All surveyors shall be responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of this article.

[Acts 1925, S.B. 84.]

**Art. 5296. Removal: Delivery of Records**

Upon removal from office, or at the expiration of his term of office, each county surveyor shall deliver to his successor all records, books, papers, maps and other things appertaining to his office.

[Acts 1925, S.B. 84.]

**Art. 5297. Custody of Records in Absence**

Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county shall take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office.

[Acts 1925, S.B. 84.]

**Art. 5298. Bound Records**

Whenever the commissioners court deems it necessary it shall order the surveyor's record to be transcribed in good and substantial books, by the surveyor or special deputies sworn to make true copies of the same, for which services they shall be allowed not more than fifteen cents per hundred words, to be paid out of the county treasury.

[Acts 1925, S.B. 84.]

**Art. 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900**

(a) In any county which has a population of not less than 39,800 nor more than 39,900 according to the last preceding federal census, the office of county surveyor is abolished.

(b) The person who is serving as the county surveyor on the effective date of this Act shall continue to serve until his present term expires.

(c) At the expiration of the county surveyor's present term, the county surveyor shall deliver to the county clerk all records, maps, and papers which belong to the office of the county surveyor and the office shall cease to exist.

(d) After the office of county surveyor ceases to exist, the commissioners court, when it finds it necessary, may employ a qualified person to perform one or more of the functions formerly performed by the county surveyor.

[Acts 1969, 61st Leg., p. 986, ch. 315, eff. Sept. 1, 1969.]

**3. SURVEYS AND FIELD NOTES****Art. 5299. Authorized Surveys**

All surveys of public lands shall be made by authority of law, and by a surveyor duly appointed, elected or licensed, and qualified.

[Acts 1925, S.B. 84.]

**Art. 5300. Field Notes; Requisites**

The field notes of every such survey shall state:

1. The county in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of the same.
3. The land by proper field notes with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey.
5. The variation at which the running was made.

6. The names of the chain carriers.

7. The date thereof, and the signature of the surveyor.

8. The surveyor shall officially certify to the correctness of the survey, that it was made according to law; that such survey was actually made in the field, and that the field notes have been duly recorded, giving book and page.

9. When the survey has been made by a deputy, the county surveyor shall certify officially that he has examined the field notes, has found them correct, and that they are duly recorded giving book and page of record.

[Acts 1925, S.B. 84.]

#### Art. 5300a. Texas Co-ordinate System

##### Zones; Descriptions of Lands

Sec. 1. The system of plane rectangular co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Texas is hereby adopted and will be known and designated as the "Texas Co-ordinate System."

For the purpose of the use of this System the State is divided into five zones: the "North Zone," the "North Central Zone," the "Central Zone," the "South Central Zone," and the "South Zone."

The area now included in the following Counties shall constitute the North Zone:

Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

The area now included in the following Counties shall constitute the North Central Zone:

Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Stone-wall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

The area now included in the following Counties shall constitute the Central Zone:

Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culbertson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

The area now included in the following Counties shall constitute the South Central Zone:

Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

The area now included in the following Counties shall constitute the South Zone:

Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

##### Names to be Used in Land Description

Sec. 2. (a) As established for use in the North Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Zone."

(b) As established for use in the North Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Central Zone."

(c) As established for use in the Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, Central Zone."

(d) As established for use in the South Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Central Zone."

(e) As established for use in the South Zone, the Texas Co-ordinate System shall be

named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Zone."

Terms of "X Co-ordinate" and "Y Co-ordinate" Set Up

Sec. 3. The plane rectangular co-ordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone, of this System, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y co-ordinate" shall give the position in a north-and-south direction. These co-ordinates shall be made to depend upon and conform to the plane rectangular co-ordinates of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the State of Texas, as those co-ordinates have been determined by the said Survey.

Lands in More Than One Zone

Sec. 4. When any tract of land to be defined by a single description extends from one into another of the above co-ordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

Definitions

Sec. 5. For purposes of more precisely defining the Texas Co-ordinate System, the following definition by the United States Coast and Geodetic Survey is adopted:

The Texas Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes  $34^{\circ} 39'$  and  $36^{\circ} 11'$ , along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian  $101^{\circ} 30'$  west longitude and the parallel  $34^{\circ} 00'$  north latitude. This origin is given the co-ordinates:  $x = 2,000,000$  feet (720,000 varas) and  $y = 0$  feet (0 varas).

The Texas Co-ordinate System, North Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes  $32^{\circ} 08'$  and  $33^{\circ} 58'$ , along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian  $97^{\circ} 30'$  west longitude and the parallel  $31^{\circ} 40'$  north latitude. This origin is given the co-ordinates:  $x = 2,000,000$  feet (720,000 varas) and  $y = 0$  feet (0 varas).

The Texas Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes  $30^{\circ} 07'$  and  $31^{\circ} 53'$ , along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian  $100^{\circ}$

$20'$  west longitude and the parallel  $29^{\circ} 40'$  north latitude. This origin is given the co-ordinates:  $x = 2,000,000$  feet (720,000 varas) and  $y = 0$  feet (0 varas).

The Texas Co-ordinate System, South Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes  $28^{\circ} 23'$  and  $30^{\circ} 17'$ , along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian of  $99^{\circ} 00'$  west longitude and the parallel  $27^{\circ} 50'$  north latitude. This origin is given the co-ordinates:  $x = 2,000,000$  feet (720,000 varas) and  $y = 0$  feet (0 varas).

The Texas Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes  $26^{\circ} 10'$  and  $27^{\circ} 50'$ , along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian  $98^{\circ} 30'$  west longitude and the parallel  $25^{\circ} 40'$  north latitude. This origin is given the co-ordinates:  $x = 2,000,000$  feet (720,000 varas) and  $y = 0$  feet (0 varas).

The unit of measurement in this Act shall have the following values, based on the International Meter established by the National Bureau of Standards:

- 1 meter = 39.37 inches exactly
- 1 foot = 12.0 inches exactly
- 1 vara =  $33\frac{1}{2}$  inches exactly

The position of the Texas Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Texas Co-ordinate System.

Use of Term

Sec. 6. The use of the term "Texas Co-ordinate System" on any map, report or survey, or other document shall be limited to co-ordinates based on the Texas Co-ordinate System as defined in this Act.

Purpose of Act

Sec. 7. The sole and only purpose of this Act is to recognize the above system for use in the State of Texas as definitely ascertaining positions on the surface of the earth. Nothing in this Act shall in any manner whatsoever require the use of such system. The provisions of this Section shall control over all other portions of this Act, anything in such other portions to the contrary notwithstanding; and nothing in this Act shall be construed to set



aside or disturb any corner or survey now already established.

[Acts 1943, 48th Leg., p. 611, ch. 354.]

#### Art. 5301. Loss of Field Notes

When the original field notes of any authorized survey are lost or destroyed, the owner thereof or his agent, on making affidavit of such fact and filing same in the office of the surveyor where the survey was made, may obtain from him a certified copy of the record thereof. Such copy shall be as valid and efficient in law as the original and shall secure to the party all the rights before the Commissioner that the original would have done.

[Acts 1925, S.B. 84.]

#### Art. 5302. Surveys on Navigable Streams

All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of the lines previously surveyed under the laws will permit. All streams so far as they retain an average width of thirty feet from the mouth up shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit.

[Acts 1925, S.B. 84.]

#### Art. 5303. Division Line: Notice

Before running a division line between two settlers or occupants claiming lands, the surveyor shall give written notice to the interested parties. Any survey made contrary to the true intent and meaning of this article shall be unlawful.

[Acts 1925, S.B. 84.]

#### Art. 5304. Disputed Line: Trial

When persons cannot agree to a division line of any land which has never been surveyed agreeably to law, either party may apply to the nearest justice of the peace, and make oath that he has tried and has not been able to settle such dispute, naming the parties thereto; and said justice shall issue a warrant to any lawful officer to summon the parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may summon, to give evidence on a certain day, naming the time and place. The justice shall meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute and who shall pay the costs. Each juror shall receive two dollars per day for such services, and the other officers such fees as allowed by law for similar services. If

the land in dispute is on a county line, a justice of either county in which part of the land lies may act in such case. Either party may appeal to the county court within ten days upon giving bond and security for the costs.

[Acts 1925, S.B. 84.]

#### Art. 5305. Incorrect Field Notes

The Commissioner shall cause a plain statement of the errors in any field notes in the land office, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct and return the same; and said surveyor shall do so at once without further charge. If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts, and furnish a true sketch of the survey with its connections.

[Acts 1925 S.B. 84.]

#### Art. 5305a. Validating Land Grants in Cities and Towns; General Land Office Records Conclusive as to Nonexistence of Vacancies

Sec. 1. The surveys of all lands heretofore or hereafter made, either actually on the ground or by protraction, and returned to the General Land Office and upon which patents have been issued or sale and award been made, and all valid grants by former governments, and which said surveys are located in whole or in part within the corporate limits of any city, town or village are hereby declared valid surveys and the titles to the land included within the lines of said surveys as returned to the General Land Office are hereby vested in the parties for which the same were made, their heirs, successors and assigns; provided, however, in all cases of law or equity involving boundary, title, or possession of land where the location of any such surveys or the extent or boundaries thereof shall be in issue, the corners, lines, and boundaries thereof which at the date of such incorporation were generally recognized and which have for ten years prior to filing of said suit been generally recognized and acquiesced in, shall be conclusively presumed to be the original corners, lines and boundaries of said surveys.

Sec. 2. In all cases involving boundary, title, or possession of surveys, partly or wholly included in any such incorporated city, town or village in Texas, where there is sought to be established a vacancy between surveys, the field notes and official maps in use in the General Land Office at the date of such incorporation, shall be conclusive as to the non-existence of such vacancy, and if no vacancy appears from said field notes or maps, it shall be conclusively presumed that no such vacancy exists.

[Acts 1931, 42nd Leg., p. 422, ch. 254.]

### CHAPTER THREE. SURFACE AND TIMBER RIGHTS

#### 1. GENERAL PROVISIONS

##### Article

5306. Sale and Lease of Public Lands Provided for.  
5307. Duties of Commissioner.  
5308. Accounts.

#### 2. SALES

5309. Land Subject to Sale.  
5310. Classification and Valuation.  
5311. Commissioner Shall Classify and Advertise.  
5311a. Sold in Whole Tracts Without Settlement.  
5311b. Validating Sales.  
5312. Application to Purchase.  
5313. Application: Opening.  
5314. Individual Bids.  
5315. Cash Payments, How Remitted.  
5316. Notice of Sale.  
5317. Awards.  
5318. Purchaser's Name to be Given.  
5319. First Payment Accounts.  
5320. Other Accounts.  
5320a. Extension of Time of Payment.  
5321. Timber Lands.  
5322. Timber: Sale.  
5323. Repealed.  
5323a. Reclassification of Scrap School Land.  
5323b. Withdrawal of Land from Sale or Lease.  
5324. Sale of Gayule and Lechugilla.  
5325. Unlawful Use of Minerals.  
5326. Forfeiture for Non-payment of Interest; Reinstatement; Outstanding Grazing Leases.  
5326a. Repurchase of Land Forfeited.  
5326b. Acceptance and Award of Applications for Repurchase.  
5326c. Application for Repurchase of School Lands in Montgomery County.  
5326d. Repurchase of School Land in El Paso County.  
5326e. Repurchase of School Land in Jeff Davis County.  
5326f. Repurchase of Land in Dallam and Hartley Counties Previously Set Aside for State Capitol Building.  
5326g-1. Resales and Awards of School Lands to Spouse of Forfeiting Owner Validated in Counties of 6,400 to 6,500 Population.  
5326h. Reinstatement of Original Purchases of Land in Fisher County.  
5326i. Reinstatement of Purchases in Hutchinson County.  
5326j. Reinstatement of Purchases Forfeited Prior to September 1, 1945.  
5327. Lien.  
5328. Transfer of Indebtedness.  
5329. Transfers.  
5330. Patents for Town Sites.  
5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office.  
5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized.

#### 3. LEASES

5331. Lease of Unsold Tracts.  
5332. To Advertise Lands.  
5333. Application and Delivery.  
5334. Water Supply: Option.  
5335. Expired Leases.  
5336. Forfeiture: Lien.  
5337. Lessees May Remove Improvements.

4 West's Tex.Stats. & Codes—64

#### 4. EASEMENTS

##### Article

- 5337-1. Execution in Favor of Conservation and Reclamation Districts in Connection with Soil Conservation and Flood Prevention Projects.  
5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply.

#### 1. GENERAL PROVISIONS

##### Art. 5306. Sale and Lease of Public Lands Provided for

All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter. All tracts of less than eighty acres shall be sold as a whole for cash. All such lands shall be sold without condition of settlement and residence, but shall not be sold to corporations.

[Acts 1925, S.B. 84.]

##### Art. 5307. Duties of Commissioner

The Commissioner is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the Constitution and laws of this State. He shall adopt such regulations not inconsistent therewith as may be deemed necessary for carrying into effect the provisions of this chapter, and may alter or amend such regulations so as to protect the public interest; but all such regulations shall first be submitted to the Governor for his approval. The Commissioner shall adopt all forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may call upon the Attorney General to prepare such forms, and said officer shall also furnish the Commissioner with such advice and legal assistance as may be requisite for the due execution of the provisions hereof. The Commissioner shall furnish all available data to the State Board of Education on its request.

[Acts 1925, S.B. 84.]

##### Art. 5308. Accounts

The Commissioner shall retain in his custody as records of his office each application, affidavit, obligation and paper relating to the sales and leases of said lands, and shall cause to be kept accurate accounts with each purchaser or lessee.

[Acts 1925, S.B. 84.]

#### 2. SALES

##### Art. 5309. Land Subject to Sale

On the first day of September, 1925, and the first day of each January, May and September of each year thereafter all of the surveyed pub-

lic free school land then unsold and portions of same and all tracts theretofore surveyed for which field notes were returned to and filed in the General Land Office and which reverted to the public domain or the public free school fund, and those surveys for which field notes were returned to and filed in the General Land Office and cannot be legally patented under existing law; and such sold public free school and asylum land as may be forfeited or canceled for any cause prior to the sale date for which the land may be advertised and such unsurveyed land as may hereafter be recovered for the public free school fund upon suit by the Attorney General filed prior to the acquisition of rights to purchase the area as unsurveyed land, shall be subject to and offered for sale by the Commissioner of the General Land Office under the regulations and upon the terms and conditions provided in this Act.<sup>1</sup>

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5311, 5311a, 5311b.

#### Art. 5310. Classification and Valuation

The Commissioner shall from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this chapter, designating the same as agricultural, grazing, or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisalment is made on the records of the Land Office, no further action on the part of the Commissioner, nor notice to the county clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre, and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this chapter shall be sold with the reservation of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs, and all applications shall so state.

[Acts 1925, S.B. 84.]

#### Art. 5311. Commissioner Shall Classify and Advertise

In cases where any land included in this Act<sup>1</sup> may be leased and the same may come on the market by reason of the expiration or cancellation of such leases and in cases where land may be sold and become subject to forfeiture or cancellation for non-payment of interest and thereby subject to revert to the fund to which it originally belonged by reason of the forfeiture or cancellation of the sale, it shall be the duty of the Commissioner to classify and value same before some sale date thereafter and adopt such means as may be at his command that will give wide publicity and general information as to when such land will be forfeited or canceled, and when it and other land will be on the market for sale together with the regulations, terms and conditions upon which the land may be purchased if past due interest should not be paid. No tract of land shall be subject to sale, except unsurveyed

school land, until it shall have been advertised. If there are no other satisfactory or sufficient means at the command of the Commissioner that will give the necessary publicity he shall have printed at the expense of the State, to be paid out of the appropriation for public printing, lists of the land for free distribution to the public. The list shall contain a brief statement of how one shall proceed to buy the land and also state the year to which delinquent interest must be paid to prevent a forfeiture and cancellation. No corporation shall buy any land under this Act.

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5309, 5311a, 5311b.

#### Art. 5311a. Sold in Whole Tracts Without Settlement

The land included in this Act<sup>1</sup> shall be sold in whole tracts only and without condition of settlement and residence. Any unsold land may be leased subject to sale, at not less than five cents per acre per annum, payable in advance each year and for a term not to exceed five years. All land so leased shall be subject to sale on any sale date for which it may be advertised to come on the market.

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5309, 5311, 5311b.

#### Art. 5311b. Validating Sales

In cases where public free school and asylum land has been advertised as being subject to forfeiture for non-payment of interest and to be forfeited and canceled and come on the market for sale at some future sale date and such land was declared forfeited and the sale canceled on the records of the General Land Office and sale awards issued upon applications filed at such sale date, and said sale award has been held by the Supreme Court to be void and all other sale awards which may be void or voidable or the titles to which may have become defective from any cause, are hereby validated, and when the said land shall be fully paid for together with payment of all fees it shall be patented; provided, in cases where the sale award of the land advertised as aforesaid has not stood one year the owner of said land at date of forfeiture shall have the right to apply to the General Land Office for a re-instatement of said former sale upon the payment of all past due interest at any time within six months after the taking effect of this Act.

[Acts 1925, S.B. 84.]

#### Art. 5312. Application to Purchase

One desiring to buy any portion of such surveyed land shall make separate written application to the Commissioner for each tract applied for as a whole, designating the same and stating the price offered, and make affidavit that he desires to purchase the land for himself and that no other person or corporation is interested in the purchase thereof either directly or indirectly, and pay one-fifth of the aggregate price offered for the land, and submit his obligation in a sum equal to the

amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the State at the General Land Office at Austin, Texas on the first day of each November thereafter until the whole purchase price is paid, one-fortieth of the unpaid balance with interest on the unpaid purchase price at the rate of five (5) per cent per annum. Upon receipt and filing of the application, affidavit, obligation and the one-fifth of the price offered, the sale shall be held effective from that date.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 351, ch. 191, § 2.]

#### Art. 5313. Application: Opening

The application shall be delivered to the Land Office in a sealed envelope addressed to the Commissioner at Austin, and the envelope shall have indorsed thereon in effect: "Application to buy land," and date when the land will be on the market. Applications received at the Land Office in envelopes not so indorsed shall nevertheless be valid. All such envelopes shall remain unopened and the applications shall remain unfiled and all shall be safely and securely kept by the Commissioner or his Chief Clerk until the day following the day when the land comes on the market and at ten o'clock a. m. on said day one or both of them shall begin to open the envelopes and file all applications; provided, if the opening day should be Sunday or other legal holiday, the opening shall be postponed until the first work day thereafter. Those desiring to be present at such opening may do so. All sales shall be made to, and date from the filing of the application of, the applicant who offers the most for the land, at a price not less than that fixed by the Commissioner, and shall be made by or under the direction of the Commissioner. Should two or more applicants offer the same price for any tract, the same being the highest price offered therefor on any sale date, all bids shall be rejected and the land offered for sale on the next sale date, but a subsequent bid shall not be considered if less than the former price offered.

[Acts 1925, S.B. 84.]

#### Art. 5314. Individual Bids

Land that is or may be on the market, and not filed on as provided in the preceding article, may be filed on and sold to any one any time upon proper applications filed in the Land Office as provided by law, except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but if two or more applicants should offer the same price, the Commissioner shall proceed as herein provided for in the first filing.

[Acts 1925, S.B. 84.]

#### Art. 5315. Cash Payments, How Remitted

All such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the State Treasurer, without liability; provided, that, should a remittance be made payable to the Commissioner, such payment shall not be invalid for that reason, but the Commissioner shall indorse it to the State Treasurer without incurring liability and the same shall be treated as if payable to the Treasurer. The application shall be void if the payment is not made as required in this article.

[Acts 1925, S.B. 84.]

#### Art. 5316. Notice of Sale

The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records.

[Acts 1925, S.B. 84.]

#### Art. 5317. Awards

Notice of awards shall be prepared and issued by the Commissioner, and shall be appropriately numbered and shall be so worded as to constitute a receipt for first payment when signed by the Commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of awards shall be prepared in duplicate, one to be detached from the book and retained in the Land Office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupon shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the Commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amounts remitted as interest and principal, and both the original and duplicate shall be mailed to the Commissioner with the remittance.

[Acts 1925, S.B. 84.]

#### Art. 5318. Purchaser's Name to be Given

Persons making payments of interest, principal or lease rentals on land shall give the name

of the original purchaser or lessee and sufficiently designate the land.

[Acts 1925, S.B. 84.]

#### Art. 5319. First Payment Accounts

When an envelope inclosing an application to purchase land is opened and the remittance for the first payment is in the Land Office, the Commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the Treasurer. On receipt thereof, the Treasurer shall check the remittances with the lists, and, if found correct, he shall receipt one of the lists and return it to the Commissioner and retain the other list; and thereupon the Commissioner shall deliver the third list retained by him to the Comptroller. The Treasurer shall at once collect all collectible remittances and report to the Commissioner and Comptroller all remittances not collectible in Austin. The items not collected shall be returned to the Commissioner. All first payments thus collected by the Treasurer shall be retained by him until he receives notice from the Commissioner of the final disposition of the applications to purchase, and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the Treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the Comptroller. On the last working day of each month, the Treasurer shall deposit in the Treasury to the credit of the proper fund the sum collected by him on accepted applications during that month.

[Acts 1925, S.B. 84.]

#### Art. 5320. Other Accounts

Payments on interest, principal and lease rentals shall be listed and accounted for separate from, but in a similar manner to, first payments. The Treasurer shall deposit eighty per cent of all such remittances received each month to the credit of the probable fund to which they belong, as indicated by the Commissioner; and he shall hold the remaining twenty per cent upon deposit receipts furnished by the Comptroller until receipt of definite notice from the Commissioner of the proper fund, which shall then be credited with the full amount received. The Commissioner shall give such definite notice to the Treasurer and Comptroller immediately after he issues receipts to the remitters. The Commissioner, Treasurer and Comptroller shall each keep an account with each fund according to advices given by them, retaining such advices as permanent records.

[Acts 1925, S.B. 84.]

#### Art. 5320a. Extension of Time of Payment

The time for the payment of all notes or obligations executed by purchasers of school land

for the unpaid balance of principal due the State thereon which are due or will become due prior to November 1, 1961, is hereby extended to November 1, 1961, subject to all the pains and penalties provided in the Acts under which the purchases were made; provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installments of interest; and provided further, that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, 42nd Legislature.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 92, ch. 59, § 1.]

<sup>1</sup> Article 5421c, § 7.

#### Art. 5321. Timber Lands

Timber on lands shall be sold in full tracts for cash at its fair market value, and the Commissioner shall adopt such regulations for the sale thereof as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued chiefly for the timber thereon.

[Acts 1925, S.B. 84.]

#### Art. 5322. Timber: Sale

Application to purchase timber shall be made in the manner provided for the filing of applications for the purchase of lands. If two or more persons each apply to purchase the timber and land on the same day, the one who offers more for the timber but less for the land than a competitor shall have an option for thirty days to take the land at the highest price offered by such competitor, or he may be awarded the timber without the land. If the timber is so sold without the land such competitor shall have an option for thirty days to purchase the land. If such first party buys neither the timber nor the land, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. If two or more applications for timber alone be filed on the same day the one offering the most therefor shall be accepted. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award to remove or protect all the timber thereon. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the State, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that event the timber shall revert to the owner of the land.

[Acts 1925, S.B. 84.]

Art. 5323. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13

**Art. 5323a. Reclassification of Scrap School Land**

The Commissioner of the General Land Office is hereby authorized to revalue and to reclassify all tracts of unsold scrap school land that was heretofore valued and classified on March 26, 1926, and which remains unsold when this Act takes effect. Within sixty days after such revaluation and reclassification the person for whom the survey was originally made shall file in the General Land Office his application for the purchase of said land together with the full cash payment for the tract applied for at the value per acre fixed thereon by the said Commissioner.

[Acts 1927, 40th Leg., p. 153, ch. 107, § 1.]

**Art. 5323b. Withdrawal of Land from Sale or Lease**

Sec. 1. That the surface and the minerals therein of all river beds and channels, and of all unsurveyed public free school lands, and portions of the same, in the State of Texas, are hereby withdrawn from sale or lease until otherwise provided by law.

Sec. 1a. Provided however that such withdrawal from sale and lease of unsurveyed public school land shall not apply in cases where application of inquiry has been heretofore made therefor and on which suit is now pending.

[Acts 1929, 41st Leg., 3rd C.S., p. 526, ch. 22.]

**Art. 5324. Sale of Gayule and Lechuguilla**

The Commissioner may, with the consent and approval of the Governor and Attorney General, sell the gayule or lechuguilla growing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the State. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the State.

[Acts 1925, S.B. 84.]

**Art. 5325. Unlawful Use of Minerals**

If any person who has no authority or right to do so, cuts or removes any mineral, gayule or lechuguilla from the school land belonging to the public free school fund, judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the State Treasurer, and by him credited to the fund to which the land belongs.

[Acts 1925, S.B. 84.]

**Art. 5326. Forfeiture for Non-payment of Interest; Reinstatement; Outstanding Grazing Leases**

If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited," or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands may be offered for sale on a subsequent sale date. In any case where lands have heretofore been forfeited or may hereafter be forfeited to the State for non-payment of interest, the purchasers, or their vendees, heirs or legal representatives, may have their claims reinstated on their written request by paying into the Treasury the full amount of interest due on such claim up to the date of re-instatement, provided that no rights of third persons may have intervened. The right to re-instate shall be limited to the last purchaser from the State or his vendees or their heirs or legal representatives. Such right must be exercised within five (5) years from the date of the forfeiture. In case there is an outstanding valid grazing lease which would prevent re-instatement within the time prescribed by this Act then such claim may be re-instated within sixty (60) days after the expiration of such grazing lease, provided application for re-instatement shall have been filed in the General Land Office within the five-year period above prescribed, accompanied with payment of all interest due thereon. In all cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one (1) year in which to make payment after the first day of November next after such death, before the Commissioner shall forfeit the land belonging to such deceased purchaser; and should such forfeiture be made by the Commissioner within said time, upon proper proof of such death being made, such forfeiture shall be set aside, provided that no rights of third persons may have intervened. Nothing in this Article shall inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land.

[Acts 1925, S.B. 84; Acts 1941, 47th Leg., p. 351, ch. 191, § 3; Acts 1951, 52nd Leg., p. 92, ch. 59, § 2.]

**Art. 5326a. Repurchase of Land Forfeited**

Sec. 1. In case of<sup>1</sup> any of the public free school lands that have been heretofore purchased from the state have been forfeited for nonpayment of interest and have not been resold, and that which may hereafter be forfeited for nonpayment of interest, either with or without advertisement as being subject to for-

feiture for nonpayment of interest that may have accrued prior to November 1, 1925, the owner of such land or a part thereof at the date of forfeiture shall have the right for a period of ninety days after the date of the notice of revaluation of such lands as herein provided to repurchase same upon the terms and conditions in this act any or all of the land in whole tracts according to the forfeiture; provided, that two or more portions of the same section or tracts may be combined into one purchase as may be desired by the applicant.

Sec. 2. Where any of the lands included in the preceding section may hereafter be forfeited for the non-payment of interest in the manner provided by law for such forfeiture and either before or after advertisement of land as being subject to forfeiture for non-payment of interest, the Commissioner of the General Land Office shall forward such list of land to the clerk of the county in which the land is wholly or partly located or to the clerk of the county to which such county may be attached for judicial purposes and include therein such land as may have heretofore been forfeited and remains unsold and on which valid oil and gas applications have not been filed. Within sixty days after a list of such forfeited land was forwarded to the proper clerk the owner or part owner mentioned in the preceding section, who may desire to repurchase such land as provided herein, shall advise the said Commissioner of such desire and pay one cent per acre for each acre such person desires revalued. As soon as practicable after the receipt of such advice and the one cent per acre by the Commissioner, he shall proceed to ascertain the reasonable value of such land and appraise the same accordingly. Duplicate notices of said appraisement shall be prepared and one shall be sent to the person requesting the revaluation and the other shall be retained for the General Land Office. One of two or more part owners of land who request a revaluation shall be deemed as having acted for the other owners, and a repurchase by such one or more persons shall likewise be deemed as made on behalf of all of them and shall inure to the benefit of every owner of a part thereof to the extent of each ones ownership. If such forfeiting owner desires to repurchase the land at the appraised value placed thereon, he shall file his application therefor in the General Land Office within ninety days after the date in the notice of appraisement, together with one-fortieth of the appraised value and his obligation for the remaining portion of the purchase price bearing the same rate of interest per annum as the forfeited purchase bore. The one-fortieth cash payment and future interest and principal payments and forfeiture for non-payment shall be the same and conform to the present or any future law regulating the purchase and forfeiture of public free school land. The one cent per acre received by the Commissioner, or so much thereof as may be necessary, shall be used by him to defray the expenses incident to

the revaluation and the remainder, if any, shall be by him returned pro rata to those for whom it was paid into the General Land Office. If land should be purchased under this act by one or more part owners, such purchase shall inure to the benefit of each and every owner at date of forfeiture according to each one's former interest.

Sec. 3. If the owner at the date of forfeiture shall not exercise his right to repurchase, the Commissioner shall place the land on the market for sale in the manner that is now or may hereafter be provided by law for the sale of other forfeited public free school lands. One-sixteenth of the oil and gas, and all of other minerals in the lands included herein, whether known or unknown, are expressly reserved to the public free school fund in the event the forfeited sale was with mineral reservation. Forfeited land, on which the owner requests a revaluation as herein provided, shall not be subject to oil and gas application until such forfeiting owner fails to repurchase as herein provided.

Sec. 4. Whenever any land affected by this act is repurchased under the rights of repurchase given herein, any lien, legal or equitable, in behalf of any person of the State, and any valid contractual right in favor of any person or persons existing in and to said land, or any part thereof, at the time of forfeiture, shall remain unimpaired and in full force and effect as if no such forfeiture had occurred; also all forfeitures without advertisement of the land for which land the owner or owners of part thereof requested a revaluation within the time prescribed herein and for which applications to repurchase were filed in the General Land Office in legal form after expiration of the time required by law and on which the first one-fortieth cash payment was made, such forfeitures and applications and the sale and award thereon are hereby authorized and in all things validated and shall not be questioned by the State or any person whose rights did not accrue prior to the taking effect of this act.

Sec. 5. The fact that several consecutive years drought in that portion of the State in which most of the public lands are located caused the original enactment of this law and the fact that the validity of forfeitures without first advertising the land as being subject to forfeiture and naming the date of forfeiture and sale as provided in Chapter 130 of an act approved March 28, 1925, has been questioned and the fact that this original Chapter 94 could not have been executed without great expense to the State, except in the manner it has been administered by the General Land Office, which has attained the purpose of the Legislature in its enactment, and the importance of placing land titles beyond question, creates an emergency and an imperative public necessity exists, that the constitutional rule requiring bills to be read on three separate days in each house be suspended and that this be placed upon third reading and final passage, and take

effect from and after its passage and it is so enacted.

[Acts 1925, 39th Leg., p. 267, ch. 94; Acts 1926, 39th Leg., 1st C.S., p. 43, ch. 25, § 1.]

<sup>1</sup> So in enrolled bill.

#### Art. 5326b. Acceptance and Award of Applications for Repurchase

Sec. 1. In cases where public school land in Gaines, Yoakum, Kinney, San Augustine and Hudspeth Counties was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27th, 1926,<sup>1</sup> and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, and which land is located in Gaines, Yoakum, Kinney, San Augustine and Hudspeth Counties, Texas, together with the first payment therefor, after the expiration of the time by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office, provided such application and first payment shall be filed within one year from the passage of this Act.

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances.

[Acts 1929, 41st Leg., p. 622, ch. 283; Acts 1929, 41st Leg., 1st C.S., p. 157, ch. 58; Acts 1929, 41st Leg., 2nd C.S., p. 196, ch. 92, § 1.]

<sup>1</sup> Article 5326a.

#### Art. 5326c. Application for Repurchase of School Lands in Montgomery County

Sec. 1. In cases where public school land located in Montgomery County, Texas was forfeited and came under the terms of either Chapter 94, An Act approved March 19, 1925, or Chapter 25, An Act approved October 27, 1926,<sup>1</sup> and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances.

[Acts 1930, 41st Leg., 4th C.S., p. 7, ch. 6.]

<sup>1</sup> Article 5326a.

#### Art. 5326d. Repurchase of School Land in El Paso County

Sec. 1. In cases where public school land located in El Paso County, Texas, was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27, 1926,<sup>1</sup> and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereof shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances.

[Acts 1930, 41st Leg., 5th C.S., p. 210, ch. 64.]

<sup>1</sup> Article 5326a.

#### Art. 5326e. Repurchase of School Land in Jeff Davis County

Sec. 1. In cases where public school land located in Jeff Davis County, Texas, was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27, 1926,<sup>1</sup> and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances.

[Acts 1930, 41st Leg., 5th C.S., p. 244, ch. 80.]

<sup>1</sup> Article 5326a.

#### Art. 5326f. Repurchase of Land in Dallam and Hartley Counties Previously Set Aside for State Capitol Building

Sec. 1. Where land heretofore set apart in Dallam and Hartley Counties, Texas, to build the Capitol Building of the State of Texas, that has been recovered by the State and appropriated as provided by law and heretofore purchased from the State, has been forfeited or is subject to being forfeited for nonpayment of interest and such lands in Block 76 in Loving



County, Texas, not forfeited, reappraised, and repurchased under the provisions of Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, Page 43,<sup>1</sup> and/or principal accrued prior to the date of the passage of this Act, said lands shall be forfeited and reappraised by the State Land Commissioner, or his duly authorized agent, and that notice of the reappraisal shall be given to the former owner or owners, who shall have a preference of ninety (90) days after the date of notice to repurchase the same upon the terms and conditions provided in Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, Page 43. And provided further, that any person, or persons, owning any of such land which is not subject to being forfeited as now provided by law, may have the right, at his option, to have said land forfeited and reappraised in the same manner hereinabove provided and that he be given the same preference right to repurchase said land at the newly appraised value by the same method as hereinabove provided; provided that in repurchasing said land, all persons shall be given credit for all principal which has heretofore been paid upon said land and that when such person, or persons, has paid the amount of the new appraisal, he shall be entitled to a patent to said land from the State Land Commissioner as provided by law, and, provided that in no event shall any money heretofore paid on said land be refunded to any purchaser or purchasers of said land.

Sec. 1-a. When the Commissioner of the General Land Office has reappraised the above mentioned land, he shall submit a statement to the Governor and the Attorney General showing the valuation placed upon each separate tract and it shall be the duty of the Governor and the Attorney General to approve or disapprove the valuations placed upon said property and to advise the Commissioner of the General Land Office of such approval or disapproval of said valuations and if said valuations are approved by both the Governor and the Attorney General, the same shall be sold as above provided, but unless both the Governor and the Attorney General approve such valuations, no such sale shall be made.

Sec. 2. Any person wishing to repurchase any of said land against which any taxes of any nature are delinquent shall pay said taxes and any interest, penalties, and costs that may have accrued on said land and shall provide the Land Commissioner with a tax receipt showing said taxes to be paid, said taxes to be paid within the ninety (90) days provided in which time said person, or persons, are entitled to repurchase said land.

[Acts 1937, 45th Leg., p. 665, ch. 332.]

<sup>1</sup> Article 5326a.

#### Art. 5326g-1. Resales and Awards of School Lands to Spouse of Forfeiting Owner Validated in Counties of 6,400 to 6,500 Population

In cases where public school land in counties with a population of not less than six thousand four hundred (6,400) nor more than six thousand five hundred (6,500) according to the last preceding Federal Census, was forfeited prior to January 1, 1938, and came under the terms of either Acts 1925, Thirty-ninth Legislature, Regular Session, Chapter 94, page 267, an Act approved March 19, 1925, or Acts 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, page 43, an Act approved October 27, 1926,<sup>1</sup> or any amendments to either of said Acts, and either the forfeiting owner or the spouse of the forfeiting owner filed, prior to January 1, 1935, his request for the re-valuation of such lands and said request was granted, and said lands were re-validated by the Commissioner of the General Land Office and such lands resold or awarded by the Commissioner of the General Land Office, prior to January 1, 1938, to the spouse of such forfeiting owner, then such resale or award to such spouse of such forfeiting owner is hereby confirmed and validated and shall be deemed as valid as if such resale or award had been made to and in the name of the forfeiting owner himself.

[Acts 1939, 46th Leg., p. 702, § 1.]

<sup>1</sup> Article 5326a.

#### Art. 5326h. Reinstatement of Original Purchases of Land in Fisher County

In cases where lands belonging to the Public Free School Fund located in Fisher County stand forfeited on the records of the General Land Office and said forfeitures having been made by the Commissioner of the General Land Office prior to September 1, 1941 and where there is no intervening rights of a third person, the said forfeitures may be set aside and the original purchases reinstated upon payment of all moneys due and owing on such land including interest and principal; providing the owners at the time of said forfeitures or their assigns shall have filed their applications for reinstatement prior to April 15, 1949.

[Acts 1949, 51st Leg., p. 318, ch. 151, § 1.]

#### Art. 5326i. Reinstatement of Purchases in Hutchinson County

Sec. 1. In cases where lands belonging to the Public Free School Funds located in Hutchinson County, Texas, stand forfeited on the records of the General Land Office, and where said forfeitures have been made by the Commissioner of the General Land Office after September 1, 1942, and prior to February 1, 1943, and where such lands have been used or occupied by the original purchaser of said lands from the State of Texas for a continuous period of twenty-seven years or more, the said forfeitures may be set aside and the original

purchases re-instated by the said Commissioner upon the payment of all moneys due and owing on such land, including interest and principal; providing that such re-instatement shall not be effective as to any intervening rights of third parties.

Sec. 2. In cases where lands belonging to the Public Free School Fund located in Harde-man County stand forfeited on the records of the General Land Office and said forfeitures having been made by the Commissioner of the General Land Office prior to September 25, 1943, and after January 1, 1943, and where the lands have been improved by the present occupant or user to the extent of One Hundred (\$100.00) Dollars or more, the said forfeitures may be set aside and the original purchases re-instated by the said Commissioner upon payment of all moneys due and owing on such land, including interest and principal; providing that such reinstatement shall not be effective as to any intervening rights of third parties.

Sec. 3. If any section, sub-section, clause, sentence, or provision of this Act, for any reason, be held to be invalid or unconstitutional, it shall not affect in any wise the remaining provisions of this Act not so held, and all that portion not so held invalid shall remain in full force and effect; it being the express intention of the Legislature to enact such Act without respect to such section, sub-section, clause, sentence, or provision, or a part thereof, so held to be invalid or unconstitutional.

[Acts 1950, 51st Leg., 1st C.S., p. 84, ch. 21.]

#### Art. 5326j. Reinstatement of Purchases Forfeited Prior to September 1, 1945

In cases where Public Free School Lands have been previously sold and forfeited by the Commissioner of the General Land Office for nonpayment of interest prior to September 1, 1945, the purchasers, at the date of forfeiture, or their vendees, heirs or legal representatives, may have their purchases reinstated provided the rights of third parties may not have intervened and further provided that application, together with payment of all principal and interest due and owing on such purchases shall have been made to the Commissioner of the General Land Office prior to February 1, 1951. In case there is an outstanding valid grazing lease which would prevent reinstatement within the time prescribed by this Act, then such claim may be reinstated within sixty (60) days after the expiration of such grazing lease, provided application for reinstatement shall have been filed in the General Land Office prior to February 1, 1951, accompanied with full payment of all principal and interest due thereon.

[Acts 1951, 52nd Leg., p. 436, ch. 269, § 1.]

#### Art. 5327. Lien

To secure the payment of all principal and interest due upon any sale of public free school land, University land, and the several asylums land, the State shall have an express lien for

the use and benefit of the fund to which the land belongs in addition to any right and remedy that it has for the enforcement of the payment of any principal or interest that may become due and unpaid.

[Acts 1925, S.B. 84.]

#### Art. 5328. Transfer of Indebtedness

If any person, firm or corporation or the Federal Farm Loan Bank with the consent of the owner of any lands mentioned in the preceding article, pays to the State the principal and interest due upon any obligation given for such land, the Commissioner shall be authorized, upon written request of such owner duly acknowledged in the manner required for the conveyance of real estate, coupled with an affidavit of ownership, to execute, acknowledge and deliver a written transfer of the indebtedness held by the State to such person, firm or corporation or the Federal Farm Loan Bank which shall thereupon be subrogated to all the rights, liens and remedies held by the State to secure and enforce the payment on the amount of principal and interest so paid to the State. If the land claimed by the one representing himself to be the owner should be held under such evidence of titles as the law or rules of the Land Office will not authorize or permit to be filed in said office, then the Commissioner may admit the owner to be such person as the person, firm or corporation or the Federal Farm Loan Bank paying the indebtedness shall admit to be the owner, and upon such admission the instrument of transfer shall be executed. Nothing herein shall change in any particular whatever, the law or rules that obtain in the Land Office relative to titles to land and the issuance of patents thereon.

[Acts 1925, S.B. 84.]

#### Art. 5329. Transfers

Owners of public free school land and asylum land purchased from the State may sell their land or a definite portion of the same in any size tract. If in any of the succeeding conditions the land that is desired to be separated from another portion should not be sufficiently designated by metes and bounds in the papers offered for filing, to identify it with certainty, the Commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

1. Personal transfers.—A vendee through personal transfer executed for a whole survey or for a whole portion of a survey purchased from the State as a whole or for a portion of a survey purchased from the State as a whole or in a quantity less than the whole survey, shall have the right to become a substitute purchaser direct from the State in the manner provided herein. With the approval of the Commissioner such vendee may file in said office a complete and valid chain of title through personal transfers which have been duly executed and recorded in the

counties in which the land or a part thereof is situated or in the county to which<sup>1</sup> such county or counties may be attached for judicial purposes, and pay the lawful fees. When said papers have been filed in said office the substituted purchaser shall have his portion of land separated from the other portion, if any, on the records of the Land Office and thereby he shall assume and become liable to the State for all unpaid principal and interest due and to become due the State for the land conveyed in the deeds so filed, together with all obligations and penalties attaching to the original purchase the same as was the original purchaser. The obligation of the original purchaser and the obligation of all vendors of such substituted purchaser shall be enforceable against the substituted purchaser the same as if he were the original purchaser from the State, and the obligation of the vendor or vendors of the substituted purchaser shall be deemed canceled.

2. Other transfers.—One who claims title through a source other than by personal transfer, to a definite portion of a survey less than a whole as it was purchased from the State may, with the approval of the Commissioner, have that portion of land so claimed separated from the other portion of the survey upon the records of said office by filing therein such evidence of claims as may be required by said Commissioner and pay the lawful fees for the papers filed as evidence of the claim or a right to a separation of such area.

3. Liability of vendee.—When a separation of the land has been made upon the records of the Land Office in either manner provided for herein, that portion so separated shall be charged and credited with its pro-rata part of the principal and interest due and paid to the first day of November preceding the date of the filing of the transfers or other papers.

4. Patent.—If any owner or claimant of any land included in this chapter, which ownership or claim is shown on the records of said office, should desire a patent upon a portion thereof less than the whole, such owner or claimant may, with the approval of the Commissioner, file field notes with lawful filing fee for that portion on which patent is desired and obtain a patent therefor when the land is fully paid for with all lawful fees. If the ownership should be evidenced by personal transfers the patent shall be issued to such owner and his assigns. If the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns that holds title by original purchase or in the name of the person and his assigns who appears on said records to

hold title through the last personal transfer. If a patent should be issued in the name of one other than the legal owner, such patent and the rights granted therein shall inure to the benefit of the legal owner. Where any land has been purchased from the State on condition of residence, no patent shall be issued until proper proof of such residence either by the vendor or vendee, or both consecutively, has been filed and the Commissioner is satisfied therewith. Every vendee before the completion of the required residence by his vendor shall file in the Land Office an application, affidavit and obligation, such as is required of an original purchaser, together with the partial proof of his vendor's continuous residence to the date of the deed of transfer. On the filing of proof of the required three years' residence, the Commissioner shall issue a certificate of its sufficiency upon the payment of the lawful fees. The said certificate may be recorded in the deed records of the proper county, and when so recorded it shall become a muniment of title. After a certificate has been recorded, neither the sale nor the occupancy of said land shall be questioned by the State nor any person whose rights did not accrue prior to the completion of said residence. The effect of the issuance of said certificate shall include and extend to all land purchased as additional to a home tract on which the said certificate may have been issued. No sale made without condition of settlement shall be questioned by the State or any person after one year from the date of such sale. All purchasers shall have the option of paying the purchase price in full at any time, together with full fees, and obtain a patent for the land.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in enrolled bill.

#### Art. 5330. Patents for Town Sites

Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such a purchaser or owner of such land shall file in the land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein and is being occupied by bona fide citizens, twenty business and resident houses, or either or both.

[Acts 1925, S.B. 84.]

**Art. 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office**

**Land Offered to Claimants; Consideration**

Sec. 1. All of the lands along the 100th degree of west longitude on the East side of the Panhandle of the State of Texas and the west side of the State of Oklahoma, found to be in the State of Texas by the final decree of the Supreme Court of the United States, entered March 17th, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, Intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are hereby offered for sale to the claimants of said lands as reflected by the Deed Records or other public records of the State of Oklahoma and under the laws of the State of Oklahoma at the time of the rendition of said decree by the Supreme Court of the United States, and said lands shall be sold to such claimants as would have then owned said lands had the same been a part of Oklahoma, or who have acquired or may hereafter acquire title by foreclosure of a lien valid and enforceable under the laws of Oklahoma at the time of the rendition of such decree. The consideration for such sale shall be the sum of One (\$1.00) Dollar per acre.

**Special Land Board Abolished; Transfer of Rights and Duties**

Sec. 2. The rights and duties of the Special Land Board are transferred to the General Land Office, and the Special Land Board is abolished. The General Land Office shall have the power to ascertain the bona fide claimants of said lands as shown by the public records and under the laws of the State of Oklahoma, to make such surveys and investigations as may be necessary to carry out the provisions of this Act, and to adopt such rules, regulations and forms as it may deem expedient.

**Application; Fee; Investigation and Award**

Sec. 3. Any claimant to any portion of said lands who would have had title to same had it been located in Oklahoma, may make application to the Commissioner of the General Land Office to purchase the land claimed. Such application shall be accompanied by field notes of the tract claimed, together with a filing fee of One (\$1.00) Dollar, an examination fee of Fifteen (.15¢) Cents per acre, and with such other information as the Land Board may require to be given, including certified copies of all muniments of title under the laws of Oklahoma. Upon receipt of such application the Land Board shall cause an investigation to be made as to the status of the public records of the State of Oklahoma, and in event it is found that the applicant would have been the owner of said land at the time of the decree of the Supreme Court of the United States had the same been located in Oklahoma, or holds title

by reason of foreclosure of a lien valid and enforceable under the laws of Oklahoma at the time of such decree of the Supreme Court of the United States, such application shall be approved, and said land awarded to said applicant. Within sixty days after such award such applicant shall pay to the Commissioner of the General Land Office the sum of One (\$1.00) Dollar per acre for said land, and upon receipt of such payment the Commissioner of the General Land Office shall issue to the claimant a patent to said lands in such form as the Land Commissioner shall prescribe.

**Sale to Lien Holder**

Sec. 4. In event the claimant fails or refuses to purchase same or to apply for a patent as provided for herein, then the holder of a lien against any of said lands may make such purchase or apply for such patent on behalf of said owner and pay the consideration provided for, and all fees and expenses, and such amounts when paid by such lien holder shall be added to and become a part of the total amount secured by the lien. A failure on the part of the said owner to make purchase, or application for patent, for a period of four months after the last publication by said Land Board as provided in this Act shall constitute such failure to apply as will warrant the lien holder in making such application to purchase. The patent issued upon application and purchase of a lien holder shall be in the name of the person, persons or company who would have owned said lands had the same been a part of Oklahoma.

**Recording Deeds, Mortgages, Etc.; Evidence; Force and Effect**

Sec. 5. All deeds, mortgages, contracts and instruments of every nature, or in case of loss of any such instrument a certified copy from the record in the Oklahoma County may be so used, affecting the title to said lands, or that would have formed a part of the chain of title to the same under the laws of the State of Oklahoma, and now of record on the public records of the State of Oklahoma, may be filed and recorded in the county in Texas in which the land is now located. All deeds, mortgages, conveyances and all other instruments which would be valid under the laws of the State of Oklahoma and admissible in evidence under the laws of said State, shall be valid in Texas and shall be admissible in evidence in any court in this State, and copies of said instruments certified as provided by the laws of Oklahoma, as well as the originals thereof, may be introduced in evidence in the same manner as if executed with the formalities required by the laws of the State of Texas, and as if certified as required by the laws of this State. All such deeds, deeds of trust, mortgages, conveyances and contracts, affecting the title to any of said lands shall be given the same force and effect in the State of Texas as same would have been given in the State of Oklahoma, and all bona fide liens, incumbrances, or debentures, now

outstanding and unsatisfied, and existing against said lands at the time of the rendition of said decision of the Supreme Court of the United States are here expressly validated, save and except as to purchase money due to the State of Oklahoma, or the United States, and except taxes, general or special, due to the State of Oklahoma, or any city, county, school district or other political subdivision of the State of Oklahoma. In determining whether any lien against said land shall be enforced, the period of time intervening between the rendition of the decision by the Supreme Court of the United States and the issuance of a patent to the land involved by the State of Texas, shall not be computed in applying the Statutes of Limitation of either the State of Oklahoma or the State of Texas, and this Act shall be liberally construed in the enforcement of liens against said land, it being the intention of the Legislature that all sections and parts hereof are independent of each other, and if any section or part hereof be held unconstitutional such invalid section shall not affect the remaining sections or parts hereof.

#### Deposit and Use of Fees

Sec. 6. The examination fees provided for in Section 3 of this Act shall be deposited with the State Treasurer in a special fund to the credit of the Land Board created in Section 2 hereof. All such moneys so paid into the State Treasury are hereby specifically appropriated to said Land Board for the purpose of defraying the authorized and necessary expenses incident to the enforcement of this Act incurred by said Board in determining the identity of persons entitled to the benefits of this Act. The Comptroller shall, from time to time, upon requisition of the Commissioner of the General Land Office, draw warrants upon the State Treasurer for the amounts specified in such requisition, not exceeding, however, the amount of such fund on deposit at the time of the making of any requisition therefor. Any sum remaining in such fund after all expenses have been paid shall be transferred to the Permanent School Fund. The amount of money accruing to the State of Texas as consideration for the sale of the land as provided for in Section 3 hereof shall be placed to the credit of the Permanent School Fund.

#### Determination by Board; Proclamation; Time for Application

Sec. 7. The Land Board, upon the passage of this Act, is authorized to determine when such lands are available for purchase, and said Board shall by proper proclamation give notice to all persons desiring to file an application to purchase said land, by causing such proclamation to be published once each week for two consecutive weeks in some newspaper of general circulation in each county in which any part of said lands may be located, and by filing a copy of such proclamation with the County Clerk of each such county. Applications to purchase such lands shall be filed with the

Commissioner of the General Land Office within four months from and after the last publication, and if said claims are not filed within said time an additional filing fee of Ten (10¢) Cents per acre shall be required. No land shall be patented or sold under the provisions of this Act unless claimed and applied for within twelve months after the publication of said proclamation, and the proclamation shall so state.

[Acts 1931, 42nd Leg., p. 311, ch. 185; Acts 1941, 47th Leg., p. 242, ch. 170, § 1; Acts 1951, 52nd Leg., p. 298, ch. 177, § 1.]

#### Art. 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized

From and after the effective date of this Act all public lands in this State situate along the western boundary of the State of Oklahoma and the eastern boundary of the State of Texas and along the 100th degree of west longitude, found to be in the State of Texas by final decree of the Supreme Court of the United States entered March 17, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are to be offered for sale in accordance with the provisions of Article 5330A, Revised Civil Statutes of Texas Acts 1931, Forty-second Legislature, Page 311, Chapter 185.

[Acts 1939, 46th Leg., p. 478, § 1.]

### 3. LEASES

#### Art. 5331. Lease of Unsold Tracts

Any unsold land may be leased at any time at not less than five cents per acre, payable in advance each year and for a term not to exceed five years, but all land so leased and unsold shall be subject to sale on each succeeding sale date.

[Acts 1925, S.B. 84.]

#### Art. 5332. To Advertise Lands

All leases under the provisions of this chapter may be advertised by the Commissioner in such manner as he deems best, and let to the highest responsible bidder in such quantities and under such regulations as he deems to be the best interest of the State, not inconsistent with the equities of the occupant. Any bid or offer to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

[Acts 1925, S.B. 84.]

#### Art. 5333. Application and Delivery

One desiring to lease said lands shall make written application to the Commissioner specifying and describing the particular lands he desires to lease; and thereupon the Commissioner shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and shall execute to

the lessee in the name and by authority of the State of Texas a lease on such lands. When the lessee has paid the rent for one year in advance, the Commissioner shall deliver said lease to the clerk of the county in which the land is situated, who shall record in a well-bound book kept in his office, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run, and no other record of leases shall be required. The clerk shall be entitled to twenty-five cents for entering said memorandum. Upon payment of said fee, the clerk shall deliver the lease to the lessee. When any such lease is filed for record the clerk shall make the memorandum or abstract above provided for.

[Acts 1925, S.B. 84.]

#### Repeals

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

#### Art. 5334. Water Supply: Option

Any person desiring to lease any lands on which no permanent water supply exists, shall notify the Commissioner in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the Commissioner his bond, with good and sufficient personal security, to be approved by the Commissioner, in a sum equal to one year's rental of the quantity of land applied for, payable to the State, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the Commissioner shall, for such ninety days, withhold such lands from lease to any other person. Within or at the expiration of the said ninety days, and annually thereafter, such applicant shall pay to the State in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially, and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If said lessee fails to apply for his lease and

make the payment aforesaid within said ninety days, and shall also within said ninety days fail to prove to the satisfaction of the Commissioner within that time that he has in good faith diligently used proper means and made proper efforts to secure a water supply on such land and failed, then the Commissioner shall mark said bond, "Forfeited", and shall deliver the same to the Attorney General, who shall at once cause said bond to be sued upon and collected, and paid to the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner that proper, suitable and diligent effort has been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibilities therein, and it shall be marked, "Satisfied", by said Commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article, shall at the expiration of their lease contract, have a right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days written notice to the Commissioner.

[Acts 1925, S.B. 84.]

#### Art. 5335. Expired Leases

When a lease expires, or is canceled for any cause within ninety days from any sale date, the Commissioner shall not consider an application to lease the land within said time. An original lessee, or the assignee of an entire leasehold, who was such at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he will pay as much therefor as another, after due publicity.

[Acts 1925, S.B. 84.]

#### Art. 5336. Forfeiture: Lien

If any lessee fails to pay the annual rent due for any year within sixty days after such rent becomes due, the Commissioner shall cancel said lease by a writing under his hand and seal of office, and filing it with the other papers relating to such lease, when such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payments of all rents due, which lien shall be superior to all other liens whatsoever. A reservation of such lien in said lease shall not be essential to the preservation or validity thereof.

[Acts 1925, S.B. 84.]

**Art. 5337. Lessees May Remove Improvements**

All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same.

[Acts 1925, S.B. 84.]

**4. EASEMENTS**

**Art. 5337-1. Execution in Favor of Conservation and Reclamation Districts in Connection with Soil Conservation and Flood Prevention Projects**

Sec. 1. The Commissioner of the General Land Office is hereby authorized to execute easements on all unsold public free school lands to conservation and reclamation districts in connection with soil conservation and flood prevention projects authorized by the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress; 68th Statute 666 as amended by Public Law 1018, 84th Congress; 7th Statute 1088).<sup>1</sup>

Sec. 2. Such easements may be perpetual or for a term of years, and the form of easement may contain such provisions as the Commissioner may deem necessary to protect the interests of the state. The consideration payable to the state for such easements shall be as fixed by the Commissioner to compensate the state for any damage to the land or to the use thereof caused by such easements, but if the Commissioner shall determine that the benefits resulting from the grant of such easements exceed the damage the Commissioner may waive consideration for such easements.

Sec. 3. All mineral rights, together with the right to explore for, produce and market the same, shall be reserved to the state and shall be subject to lease for minerals as are other unsold public free school lands.

[Acts 1957, 55th Leg., 1st C.S., p. 32, ch. 14.]  
<sup>1</sup> 16 U.S.C.A. §§ 1001 to 1007.

**Art. 5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply**

Sec. 1. The Commissioner of the General Land Office is hereby authorized and empowered, acting for and on behalf of the State of Texas, to execute any and all grants of easements in, on, and across all unsold Public Free School Lands, and in, on, and across all islands, salt water lakes, bays, inlets, marshes, and reefs owned by the state within the tide-water limits, and in, on, and across that portion of the Gulf of Mexico within the jurisdiction of Texas, to Nueces County Water Control and Improvement District Number 4 for right-of-ways for pipe lines and for the installation of all works, facilities, and appliances, in any and all manners incident to, helpful or necessary for securing, storing, processing, treating, transporting, and selling an adequate supply of fresh water; provided, however, said Nueces

County Water Control and Improvement District Number 4 shall pay the sum of Ten Dollars (\$10.00) as consideration for the granting of each easement.

Sec. 2. The Commissioner of the General Land Office may grant the easements provided in Section 1 hereof for such term and shall cover only such area which in the judgment of the Commissioner may be required to carry out the purposes for which said District was created, and, if he deems it necessary, the Commissioner of the General Land Office may grant such easements perpetually.

Sec. 3. During the existence of the easements authorized and granted pursuant hereto the officers and employees, contractors and sub-contractors of the Nueces County Water Control and Improvement District Number 4 are hereby authorized to go in and upon the lands described herein to construct such pipe lines and to install all works, facilities, appliances, and to repair and to remove same from time to time.

Sec. 4. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General.

Sec. 5. All income received by the Land Commissioner under this Act from Public School Lands shall be credited to the Available School Fund.

Sec. 6. The powers and authority herein conferred and vested in the Commissioner of the General Land Office shall be cumulative of all powers and authority heretofore and hereafter vested in the Commissioner of the General Land Office under the Constitution and laws of this state.

[Acts 1959, 56th Leg., p. 688, ch. 314.]

**CHAPTER FOUR. OIL AND GAS**

**1. UNIVERSITY AND OTHER LANDS**

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|----------------|---|
| <b>Article</b> |   |
| 5338.          | Repealed.   |
| 5339.          | Application for Surveyed Lands.   |
| 5340.          | Unsurveyed Lands; Application.  |
| 5341.          | Issuance of Permit.   |
| 5341a.         | Extension of Permits.   |
| 5341b.         | Extension of Oil Leases.  |
| 5341c.         | Suspension of Running of Terms of Leases While Owner is Denied Access by United States. |
| 5341d.         | Extension of Leases on University Land; War Agency Restrictions.                        |
| 5341e.         | Suspension of Running of Terms of Leases While Owner is Denied Access by United States. |
| 5342.          | Development Work.   |
| 5342a.         | Permits Extended.   |
| 5343.          | University Permits.   |
| 5343a.         | Withdrawal of University Land from Lease.   |
| 5344.          | Oil Leases.   |
| 5344a.         | Terms of Lease.   |
| 5344b.         | Offset Wells.   |
| 5344c.         | Oil, Gas and Mineral Leases; Terms; Extension.  |
| 5344d.         | Payment and Disposition of Mineral Lease Royalties.                                     |
| 5345.          | Damages to Surface.   |
| 5346.          | Statement of Holdings.  |
| 5347.          | Distribution of Funds.  |

## Article

- 5348. General Provisions.
- 5348a. Distribution of Funds.
- 5349. Transfer of Rights.
- 5349a. Transfer of Not Less Than Forty Acres.
- 5349b. May Dissolve Combination at Wish of Owner.
- 5349c. Assignee Substituted for Original Permittee or Lessee.
- 5350. Forfeiture of Rights.
- 5351. Pollution of Streams.
- 5352. Properties Taxable.

## 2. GULF LANDS

- 5353. Lands Subject to Lease.
- 5354. Notice for Bids.
- 5355. Application for Lease.
- 5356. Tie Bids.
- 5357. Acceptance of Bid.
- 5358. Terms of Lease.
- 5359. Offset Wells.
- 5360. Forfeiture of Rights.
- 5361. Access to Lands.
- 5362. Assignments of Leases.
- 5363. Relinquishment of Lease.
- 5364. Disposition of Payments.
- 5365. Classification of Surveys.
- 5366. Pollution of Streams.
- 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf.

## 3. SOLD ASYLUM AND SCHOOL LANDS

- 5367. School and Asylum Lands.
- 5367a. Commissioner's Duty to Ascertain Bonus and Rental Money Due State.
- 5368. Sale and Lease by Agent.
- 5368a. Unconstitutional.
- 5368b. Repealed.
- 5369. Offset Wells.
- 5370. Failure to Drill Offset.
- 5371. Lease of Oil and Gas After Forfeiture.
- 5372. Forfeiture of Rights.
- 5373. Rights of Subsequent Purchaser.
- 5374. Repealed.
- 5375. Operation Under Permit.
- 5376. Lease Under Permit.
- 5377. Payments Under Permit.
- 5378. Relinquish Under Permit.
- 5379. Damages to Soil.

## 4. GENERAL PROVISIONS

- 5380. Payment of Royalty.
- 5381. Form of Payments.
- 5382. Lien.
- 5382a. Repealed.
- 5382b. Surveys and Investigations of Areas Within Tide-water Limits.
- 5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949.
- 5382c. Agreements for Operation of Areas as a Unit.
- 5382d. Lease of Lands of State Departments, Board and Agencies.
- 5382d-1. Tender of Payment of Special Fee; Percentage of Bid on Mineral Lease and Land Sales.
- 5382e. Continuation or Extension of Leases After Expiration of Primary Term.

## 1. UNIVERSITY AND OTHER LANDS

Art. 5338. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13

Art. 5339. Application for Surveyed Lands

One desiring to obtain the right to prospect for and develop oil and natural gas that may be in any surveyed area included herein shall

file with the county clerk a written application designating it sufficiently to identify it. Such clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections, or the equivalent, eligible to be embraced in one permit, such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit, such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum.

[Acts 1925, S.B. 84.]

## Art. 5340. Unsurveyed Lands: Application

One desiring to obtain the right to prospect for and develop oil and natural gas in any unsurveyed areas named in this law shall file with the county surveyor a written application for each area applied for, designating it sufficiently to identify it, but such areas shall not exceed 2,560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application.

[Acts 1925, S.B. 84.]

## Art. 5341. Issuance of Permit

When the Commissioner receives an application that was filed with the county clerk or with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for, which shall also be paid annually thereafter during the life of the permit, and an affidavit by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing, he shall file the same, and if upon examination the application and field notes are found correct and the area applied for is within the provisions of this law, the Commissioner shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years.

[Acts 1925, S.B. 84.]

## Art. 5341a. Extension of Permits

All permits to prospect for oil and gas heretofore issued on river beds or channels, fresh water lakes and islands therein which have not expired and on which as much as twenty-five thousand dollars (\$25,000.00) has been spent in prospecting for oil and gas and on which actual work is now being done, are hereby extended for a period of ten years from date the permit was issued, upon condition that the owner will pay annually in advance the acreage rental due thereon under the law as provided in the permit. This Act shall not be construed to relieve the owner of such permits from the obligations to drill such offset wells



as are required by the law under which the permit was issued.

[Acts 1925, S.B. 84.]

#### Art. 5341b. Extension of Oil Leases

All oil and gas permits heretofore or hereafter issued upon lands included herein and which have not expired shall be extended for a term of five years from date thereof, conditioned only upon the payment of the annual rental, as provided by law, in advance and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental money. After production is secured in paying quantities, the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act.

[Acts 1925, S.B. 84.]

#### Art. 5341c. Suspension of Running of Terms of Leases While Owner is Denied Access by United States

Sec. 1. If the owner of any valid oil and gas lease granted by the State is denied access to or is denied a permit to drill upon or produce from the leased premises by any duly constituted authority of the United States of America, after a bona fide attempt has been made by such owner to obtain access or permit to drill upon or produce from the leased premises, such owner may file with the School Land Board an application describing and giving the date of the action which deprives him of the right of access or the right to drill upon or produce from the premises, and if said Board is satisfied that the facts set forth in the application are true, the Board may enter an order upon its minutes suspending the running of both the primary and the principal term of such lease, or suspending any condition, obligation or duty thereunder as of the date of the origin of the cause of suspension and during the existence of the cause of suspension, so long as the lessee continues to make on each anniversary date of such lease the annual rental payments stipulated in the lease during the period of suspension. Such oil and gas lease shall remain in status quo, and all obligations and conditions existing under such lease or such of them as may be suspended by said Board, shall be inoperative and of no force and effect, except the obligation to pay delay rentals as provided for herein, until ninety (90) days after the School Land Board shall enter an order upon its minutes reciting that the cause for suspension has ceased to exist, at which time such oil and gas lease shall, provided the rental payments have been made during the period of suspension, again become operative and all of the suspended obligations and conditions, including the payment of rentals under same, shall again attach and be in force, and in the case of the suspension of the primary and/or principal terms of the lease, the lease shall thereafter continue in force for a period equivalent to the

unexpired term of the lease on the date of origin of the cause for suspension. The Commissioner of the General Land Office shall give notice immediately to the lessee of the entry of the order that the cause for suspension has ceased to exist; provided, however, that the annual rental payments have been met.

Sec. 2. Nothing contained herein shall be construed as abridging any rights or privileges conveyed by Chapter 287, Acts of the Forty-seventh Legislature, Regular Session.<sup>1</sup>

[Acts 1943, 48th Leg., p. 248, ch. 149.]

<sup>1</sup> Article 5366a.

#### Art. 5341d. Extension of Leases on University Land; War Agency Restrictions

Sec. 1. In the case of any non-producing oil, gas or mineral lease on University land, if one hundred twenty (120) days before expiration of the primary term there be in effect any restrictions issued by a Federal war agency prohibiting the drilling or completion of a well thereon, the holder of such lease shall have the right to negotiate an extension or renewal of such lease for a period of not longer than two (2) years with the Board of Regents of the University of Texas and the Commissioner of the General Land Office.

The Board of Regents of the University of Texas and the Commissioner of the General Land Office, in considering an application for an extension or renewal of any such lease above described, shall take into consideration in establishing the consideration for such lease the diligence with which the lessee has followed his duties under the existing lease, the present value of the land upon which an extension or renewal of the lease is sought, and all other good business practices. The lessee in presenting his application for extension or renewal of such lease or leases shall present evidence to the Board of Regents of the University of Texas and to the Commissioner of the General Land Office showing it was impossible for him or any of his co-owners to comply with the restrictions which he claims prohibited the drilling or completion of the well on said tract.

If the lessee should claim as grounds for an extension or renewal of any such lease that there is insufficient acreage within the tract under lease by him to comply with the Federal restriction then no extension or renewal shall be granted unless said lessee also show that there is no adjacent and adjoining acreage to said tract wherein said applicant is a party in interest that could have been combined with the tract upon which the application for extension or renewal is made in order to comply with the Federal restriction.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lease owner such instrument in writing in the nature of an extension or renewal of such lease as may be necessary or proper to carry into effect the foregoing provision of this Act.

Sec. 3. The provisions of this Act are and shall be held and construed to be cumulative of

all General Laws of this state on the subject treated of and embraced in this Act when not in conflict herewith, but in case of conflict, in whole or in part, this Act shall control.

Sec. 4. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of same shall nevertheless be held valid and binding.

[Acts 1943, 48th Leg., p. 359, ch. 238.]

**Art. 5341e. Suspension of Running of Terms of Leases While Owner is Denied Access by United States**

If the owner of any valid oil and gas lease granted by the State covering University lands is denied access to or is denied a permit to drill upon or produce from the leased premises by any duly constituted authority of the United States of America, after a bona fide attempt has been made by such owner to obtain access or permit to drill upon or produce from the leased premises, and denial of access as used herein shall include agreements by the lessee or his assigns under any such lease with a duly constituted authority of the United States not to enter upon and engage in drilling operations on any such oil and gas lease made under compulsion or threat of condemnation by such duly constituted authority of the United States, such owner may file with the Board for Lease of University Lands an application describing and giving the date of the action which deprives him of the right of access or the right to drill upon or produce from the premises, and if said Board is satisfied that the facts set forth in the application are true, the Board may enter an order upon its minutes suspending the running of both the primary and the principal term of such lease, or suspending any condition, obligation, or duty thereunder as of the date of the origin of the cause of suspension and during the existence of the cause of suspension, so long as the lessee continues to make on each anniversary date of such lease the annual rental payments stipulated in the lease during the period of suspension. Such oil and gas lease shall remain in status quo, and all obligations and conditions existing during such lease or such of them as may be suspended by said Board, shall be inoperative and of no force and effect, except the obligation to pay delay rentals as provided for herein, until ninety (90) days after the Board for Lease of University Lands shall enter an order upon its minutes reciting that the cause for suspension has ceased to exist, at which time such oil and gas lease shall, provided the rental payments have been made during the period of suspension, again become operative and all of the suspended obligations and conditions, including the payment of rentals under same, shall again attach and be in force, and in the case of the suspension of the primary and/or principal terms of the lease, the lease shall thereafter continue in force for a period equivalent to the unexpired term of the lease on the date or

origin of the cause for suspension. The Commissioner of the General Land Office shall give notice immediately to the lessee of the entry of the order that the cause for suspension has ceased to exist; provided, however, that the annual rental payments have been met.

[Acts 1945, 49th Leg., p. 300, ch. 217, § 1.]

**Art. 5342. Development Work**

Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area. If petroleum and natural gas is not sooner developed in commercial quantities the owner or manager shall within thirty days after the expiration of one year from the date of the permit, file in the Land Office an affidavit supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid, and that a bona fide effort to develop the said area was made during the twelve months preceding the filing of the statement, and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file said affidavit within the time specified, or the filing of an affidavit false in material matters shall subject the permit to forfeiture. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor.

[Acts 1925, S.B. 84.]

**Art. 5342a. Permits Extended**

All oil and gas permits issued on other than public school or university land, by the Commissioner of the General Land Office of the State of Texas under date of February 3, 1920, and heretofore extended for three years by act of the Legislature, are hereby renewed and extended for an additional period of two years; provided however, that this Act shall apply only to those permits on which all rentals have been paid and under which, as extended, a well has been drilled to a depth of 3000 or more feet, and on which drilling operations for oil and gas are being actively conducted in good faith. Rights hereunder shall be conditioned on regular payment of annual rentals covering the two year extension period, and also on owner making report to the Commissioner of the General Land Office within sixty days after this Act becomes effective, showing drilling operations and depth of well.

[Acts 1925, S.B. 84.]

**Art. 5343. University Permits**

The provisions of subdivision 3 of this Chapter, so far as they relate to a combination of permits and extension of time for beginning development and time for development thereunder, shall apply to permits upon University land.

[Acts 1925, S.B. 84.]

**Art. 5343a. Withdrawal of University Land from Lease**

If, in cases now pending in the Supreme Court or in cases hereafter filed, the said Court should decide that the mineral lease or sales Act of March 10, 1925, Chapter 71, Acts Regular Session, 39th Legislature,<sup>1</sup> is invalid or ineffective, then and in that event the minerals in all University land are hereby withdrawn from lease or sale until such time as the Legislature may enact legislation deemed adequate for the protection of the University available and permanent funds; and the Commissioner of the General Land Office shall not, in the event such sales act is declared unconstitutional, thereafter issue any oil and gas permits on said land upon any application heretofore or hereafter filed, until further legislation as to same.

[Acts 1927, 40th Leg., p. 368, ch. 249, § 1.]

<sup>1</sup> Repealed by Acts 1929, 41st Leg., p. 6, ch. 2.

**Art. 5344. Oil Leases**

Upon the payment of \$2.00 (two dollars) per acre for each acre in the permit a lease shall be issued for a term of ten (10) years, or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and immediately after the expiration of the first year after the date of the lease, the sum of two (\$2.00) dollars per acre shall be paid during the life of the lease, and in addition thereto, the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the metre output of all gas disposed of off the premises; provided, however, that the provisions hereof as to the payment of two (\$2.00) dollars per acre during the lease period and the life of said lease shall not apply to leases of bays, marshes, reefs, salt-water lakes or other submerged lands containing as much as one hundred (100) acres but not in excess of five hundred (500) acres upon which as many as five wells have been drilled, and upon which an expenditure of as much as one hundred thousand (\$100,000.00) dollars has been made. The drilling of said wells and the expenditure of said amount to be established to the satisfaction of the commissioner of the land office.

[Acts 1925, S.B. 84.]

**Art. 5344a. Terms of Lease**

A lease shall then be issued for a term of ten years or less, with the option of a renewal or renewals for an equal or shorter period, and the owner of the lease shall pay a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

[Acts 1925, S.B. 84.]

**Art. 5344b. Offset Wells**

The permit or lease shall contain the terms upon which it is issued, including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

[Acts 1925, S.B. 84.]

**Art. 5344c. Oil, Gas and Mineral Leases; Terms; Extension**

Sec. 1. All leases for the production of minerals (except gold, silver, platinum, cinnabar or other metals) covering any area within river beds and channels, unsold school lands, both surveyed or unsurveyed, or any area within tidewater limits, including islands, lakes, salt water lakes, bays, inlets, marshes, reefs, the bed of the sea and that portion of the Gulf of Mexico now or hereafter within the jurisdiction of the State of Texas, hereafter granted by the Commissioner of the General Land Office or the School Land Board, shall be granted for a primary term of five (5) years and as long thereafter as oil, gas, or other mineral covered by such lease is produced therefrom, providing that all leases for minerals, except oil and gas, shall be granted on separate leases and for separate considerations.

Sec. 2. Any lease heretofore granted and in good standing covering any of the lands or areas referred to in Section 1 of this Act, upon application by any owner thereof to the Commissioner of the General Land Office before December 1, 1971, may be amended under the terms of this Act so as to provide that such lease shall remain in effect as long after the expiration of its primary term as oil, gas, or other mineral covered by such lease is produced therefrom, provided any amendment executed by virtue of this Act shall include only those minerals covered in the original agreement to which said amendment is made; and providing further, that in amending such leases same shall be amended and renewed separately as to each mineral thereunder, except as to "oil and gas" which may be contained in one lease and each such lease shall remain in effect as long after the expiration of its primary term as such mineral covered by such lease is produced therefrom in paying quantities. The School Land Board shall fix the consideration for each such amendment, which shall not be less than Two Dollars (\$2) per acre, provided that any such amendment shall not change the original consideration in any lease to the extent that the state shall thereafter receive less than the original royalty provided in said leases. If the consideration so fixed is paid in cash within ninety (90) days after such consideration has been fixed, the Commissioner of the General Land Office shall execute and deliver to the owner of such lease an instrument evidencing such amendment. If the consideration is not paid within the ninety (90) days,

the application shall be conclusively presumed to have been withdrawn. This Act shall not authorize the Commissioner of the General Land Office or the School Land Board to change or amend the lease involved in any other respect.

Sec. 2-A. Provided that before any lease is extended the School Land Board shall have the right in any case, at the expense of the lessee involved, to do or have done such geological work as it may deem necessary for the purpose of determining the value of the lease and what amount should be charged for any extension, and all applications shall contain an agreement by the lessee that such work may be done at lessee's expense.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

Sec. 4. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any phrases, sentences, clauses, or sections of this Act shall be declared unconstitutional shall in no event affect the validity of any of the other provisions hereof.

[Acts 1947, 50th Leg., p. 139, ch. 82; Acts 1963, 58th Leg., p. 485, ch. 174, § 1; Acts 1965, 59th Leg., p. 1537, ch. 672, § 1, eff. June 18, 1965; Acts 1969, 61st Leg., p. 1498, ch. 449, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 2368, ch. 1030, § 1, eff. June 15, 1971.]

#### Art. 5344d. Payment and Disposition of Mineral Lease Royalties

Sec. 1. (a) Each oil, gas, or other mineral lease issued by a board for lease (excluding the Board for Lease of University Lands), the School Land Board, or the Commissioner of the General Land Office shall contain a provision granting the leasing agent the discretionary power to require that payment of royalty stipulated by the lease be made in kind. Such option may be exercised from time to time on not less than 60 days notice. Such other reasonable provisions, not inconsistent with this Act which will facilitate the efficient and equitable payment of royalty in kind may be included in the lease.

(b) Each board for lease (excluding the Board for Lease of University Lands), the School Land Board, or the Commissioner of the General Land Office has all powers necessary to negotiate and execute sales contracts or any other instrument or agreement necessary for the disposition of royalty taken in kind.

(c) This section shall not apply in any way to nor have any affect upon the Board for Lease of University Lands nor any lease executed on university lands.

Sec. 2. (a) In this Act, "royalty" or "royalties" refers either:

(1) to royalty payable in a sum of money equal to the market value for the field where produced and when run; or

(2) to royalty collectible in kind.

(b) In the case of royalty taken in kind, any reference to the time of a payment of royalty means the time of tender for delivery to the leasing agent of the royalty in kind, and any reference to the value or amount of payment of royalty means:

(1) the value of the proceeds of first sale by the leasing agent of the royalty taken in kind; or

(2) if no such sale occurs within 30 days of delivery, the market value of the royalty taken in kind for the field where produced and when run.

(c) This Act shall not be construed to surrender or in any way affect the right of the state under existing or future leases to receive royalty from its lessee on the basis of the fair market value produced and saved from state public lands.

[Acts 1973, 63rd Leg., p. 620, ch. 264, eff. June 11, 1973.]

#### Art. 5345. Damages to Surface

If the surface of an area included within the operations of this law, has been acquired by one prior to the filing of an application under the provisions herein, such area shall nevertheless be subject to prospect and lease as provided herein, but the owner of the permit or lease shall pay ten cents per acre to the owner of the surface annually in advance during the life of the permit or lease. The sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface.

[Acts 1925, S.B. 84.]

#### Art. 5346. Statement of Holdings

Whoever applies for a permit or lease shall file with the application an affidavit showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement.

[Acts 1925, S.B. 84.]

#### Art. 5347. Distribution of Funds

The proceeds arising from activities under this law, and Chapter 5 thereof<sup>1</sup> which affect lands belonging to the public free school funds and the permanent fund of the several asylums, shall be credited to the permanent funds of said institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the Permanent Fund of the University of Texas (except such funds as are required by the Constitution to be credited to the Permanent University Fund) shall be credited by the State Treasurer to the available fund of such institution; *Provided* that all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds, including those collected after this Act takes effect and those collected prior to September 1, 1925, now being held in suspense fund, arising from the activities affecting lands other than

those belonging in the public free school fund, the University and the several asylums, shall be credited to the General Revenue Fund. Provided that the funds herein apportioned shall not include proceeds and royalties derived from the Sand, Gravel and Shell Fund, the disposition of which is now fixed by Statute.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., 1st C.S., p. 135, ch. 43, § 1.]

<sup>1</sup> Articles 5383 to 5403.

#### Art. 5348. General Provisions

The general provisions in this article shall apply to each foregoing provision so far as applicable.

Surveyed lands within the meaning of this law shall include all tracts for which there are approved field notes on file in the Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this law shall include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated, or with the clerk of the county to which such county may be attached for judicial purposes, and shall be filed in the Land Office within thirty days after it was filed with the county clerk.

All applications for unsurveyed areas shall be filed with the county surveyor of the county in which the area or part thereof is situated. The area shall be surveyed within ninety days, and the application, field notes and plat shall be filed in the Land Office within one hundred days after the date of filing of the application.

A separate written application shall be made for the area desired in a permit. No permit or lease shall embrace the area in two or more applications.

No application, permit or lease shall embrace a divided area.

Whole tracts of surveyed lands may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

The area in each permit shall be developed independently of other areas.

When one desires a lease, any one or more whole tracts in the permit may be abandoned by relinquishment filed in the Land Office as herein provided and thereupon obtain a lease upon the remaining area; provided such remaining area is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the Land Office accompanied by one dollar filing fee. The Commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through the due course of mail to reach said clerk the area

shall be subject to applications as in the first instance.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5348a. Distribution of Funds

The proceeds arising from activities which effect<sup>1</sup> lands belonging to the public free school fund or the permanent fund of the several asylums, shall be credited to the permanent funds of said respective institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the permanent fund of the University of Texas shall be credited by the State Treasurer to the available fund of such institution, and all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the same fund.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 3024, ch. 994, § 16(d), eff. Aug. 30, 1971.]

<sup>1</sup> Probably should read "affect."

Section 16(d) of the 1971 Act renumbered article 2593a as article 5348a; § 16(c) thereof provided: "This section has no effect, except as to the official citation of the article affected."

#### Art. 5349. Transfer of Rights

The owner of a file or permit or lease under any provision of this subdivision may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated, or in the county to which such county may be attached for judicial purposes, and same shall be filed in the Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar. If not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable. A sublease contract need not be filed in the Land Office.

[Acts 1925, S.B. 84.]

#### Art. 5349a. Transfer of Not Less Than Forty Acres

Owners of oil and gas permits and leases that have heretofore been issued and those that

may hereafter be issued on University land may sell and transfer same as a whole or in tracts not less than forty acres, and the assignee may have the instruments evidencing such transfer filed in the General Land Office and that portion so transferred separated from the parent tract or parent subdivision of a tract permit or lease on the records of said office upon the payment of one dollar as a filing fee for each transfer and an additional fee of ten cents per acre for each acre in such transfer. The Commissioner of the General Land Office may, when deemed necessary, require field notes before filing a transfer. All transfers shall be recorded in the county or counties in which the area or a part thereof is located before offering same for filing in the Land Office. The one dollar filing fee shall be turned into the State Treasury to the credit of the general revenue and the acreage fee shall be turned into the State Treasury to the credit of the available fund of the State University. The provisions of this Act<sup>1</sup> shall apply to permits and leases that may be held singly or in combination with other permits or leases.

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5349b and 5349c.

#### Art. 5349b. May Dissolve Combination at Wish of Owner

Owners of oil and gas permits, and leases based thereon, that were heretofore issued and those that may hereafter be issued that have been combined under the provisions of existing law and those that may hereafter be so combined, may dissolve such combinations in such manner as may be satisfactory to the owners thereof, and conditioned only upon the payment of the fees prescribed herein when transfers are presented for filing in the General Land Office after having been recorded in the county or counties in which the area or part thereof may be located; provided no acreage fee shall be charged under this Act;<sup>1</sup> when a transfer includes a whole permit or a whole lease or a whole tract in a permit or lease.

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5349a and 5349c.

#### Art. 5349c. Assignee Substituted for Original Permittee or Lessee

When the transfers provided for herein<sup>1</sup> shall have been filed in the General Land Office the assignee or assignees in such transfer shall become substituted for the original permittee or lessee, as the case may be, and thereby assume all the obligations, pains and penalties that the law imposed upon the original permittee or lessee.

[Acts 1925, S.B. 84.]

<sup>1</sup> This article and arts. 5349a and 5349b.

#### Art. 5350. Forfeiture of Rights

If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good

faith the work necessary to the development of the area within the time required, or to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments, or to make the proper statement, or to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do, the permit or lease, shall be subject to forfeiture. When the Commissioner is sufficiently informed of such facts he may declare the permit or lease forfeited by proper entry upon the duplicate thereof in his office; and he shall mail a notice of that fact to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells. All forfeitures may, within the discretion of the Commissioner, be set aside and all rights reinstated before the rights of another intervene.

[Acts 1925, S.B. 84.]

#### Art. 5351. Pollution of Streams

All development in water or on islands, or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a permit or lease for a failure or refusal of the owner to comply with such rules and regulations as may be adopted.

[Acts 1925, S.B. 84.]

#### Art. 5352. Properties Taxable

Rights acquired under this law shall be subject to taxation as is other property.

[Acts 1925, S.B. 84.]

### 2. GULF LANDS

#### Art. 5353. Lands Subject to Lease

All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and unsold unsurveyed public free school lands, shall be subject to lease by the Commissioner to any person, firm or corporation for the production of oil and natural gas that may be therein or thereunder, in accordance with the provisions of this law.

[Acts 1925, S.B. 84.]

**Art. 5354. Notice for Bids**

The Commissioner shall fix the day and hour when an area or areas will be subject to lease and advertise or readvertise such areas at least thirty days before such lease date, except as provided in case of tie bids. The Commissioner may give such notice by distributing printed lists as provided for sales of surface rights of public lands.

[Acts 1925, S.B. 84.]

**Art. 5355. Application for Lease**

Application for separate areas and the first payment thereon shall be delivered into the Land Office on or before the day and hour on which the area will be subject to lease, in sealed envelopes indorsed, "Application to lease Minerals," with the date the area will be subject to lease. All envelopes so indorsed shall be securely kept by the Commissioner or his chief clerk unopened until the date on which applications are to be opened, and at said hour either or both of them shall open the envelopes in the presence of such persons as desire to be present. All applications received up to the opening hour, whether open or sealed, indorsed or not indorsed, shall be considered as properly delivered. An application which includes two or more areas, or is for a price less than the fixed royalty and price per acre shall be void.

[Acts 1925, S.B. 84.]

**Art. 5356. Tie Bids**

If the highest bid for the same area is made by more than one applicant, all such applications shall be rejected and a date fixed within the discretion of the Commissioner, not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance, but no bids therefor shall be considered if the price is less than the former sum offered. The State Treasurer shall return all sums paid upon rejected applications.

[Acts 1925, S.B. 84.]

**Art. 5357. Acceptance of Bid**

When an application has been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years, the lease shall terminate and the area again be subject to lease.

[Acts 1925, S.B. 84.]

**Art. 5358. Terms of Lease**

The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved, and one-eighth of the gross production of gas or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance for the first year, and thereafter in advance an additional sum of

twenty-five cents per acre for the second year, and fifty cents per acre for the third year, and one dollar per acre for each year thereafter. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual payments on the acreage. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance, pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed ten years from the date of said lease.

[Acts 1925, S.B. 84.]

**Art. 5359. Offset Wells**

If oil or gas should be produced in commercial quantities in a well on an area privately owned when such well is within one thousand feet of an area leased hereunder, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State. Such offset wells shall be drilled to such depth and such means shall be used as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A log of each well shall be filed in the Land Office within thirty days after the well has been completed or abandoned.

[Acts 1925, S.B. 84.]

**Art. 5360. Forfeiture of Rights**

The provisions of subdivision 3 of this chapter governing the forfeiture of rights thereunder and a reinstatement thereof, shall apply to leases under this subdivision, and on forfeiture of such lease, after due advertisement, it shall be subject to lease by another than such forfeiting owner.

[Acts 1925, S.B. 84.]

**Art. 5361. Access to Lands**

Whenever it becomes necessary for the owner of a lease acquired hereunder to enter the inclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner or his agent cannot agree upon the place of such entry, nor the conditions thereof, the lessee or his agent may petition the commissioners courts of the counties in which such inclosure is situated in whole or in part for the opening of such way of ingress and egress as may be necessary. Upon the filing of such petition, said courts shall lay out and establish in the manner provided for the laying out of third class public roads, such roads as may be necessary for the purpose named herein.

[Acts 1925, S.B. 84.]

**Art. 5362. Assignments of Leases**

One may transfer his lease at any time. Such transfer shall be recorded in the counties

in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee.

[Acts 1925, S.B. 84.]

#### Art. 5363. Relinquishment of Lease

An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the counties in which the area or part thereof is situated, and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State.

[Acts 1925, S.B. 84.]

#### Art. 5364. Disposition of Payments

The State Treasurer shall credit the permanent free school fund with all amounts received from the unsurveyed school lands, and with two-thirds of the amount so received from other areas, and shall credit the general revenue fund with the remaining one-third from said other areas.

[Acts 1925, S.B. 84.]

#### Art. 5365. Classification of Surveys

To administer this law to the best interest of the State, the Commissioner may recognize or decline to recognize any survey heretofore made of any area included herein. Recognized surveys shall be advertised and shall be subject to lease as a whole. Surveys not recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the Commissioner shall advertise the whole or designated portions thereof for lease. The Commissioner may require field notes for unsurveyed areas before issuing a lease therefor.

[Acts 1925, S.B. 84.]

#### Art. 5366. Pollution of Streams

All development and operations upon the areas included herein shall be done so far as practicable in such manner as to prevent the pollution of water, destruction of fish, oysters and other marine life, and obstruction of navigation. The Commissioner of the General Land Office shall promulgate and enforce such rules and regulations as may be necessary for that purpose. All such rules and regulations and any alterations of such rules shall be submitted to the Attorney General of this State for his written approval prior to the time such

rules and regulations or alterations of the same shall become effective.

[Acts 1925, S.B. 84; Acts 1955, 54th Leg., p. 671, ch. 240, § 1.]

#### Art. 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf

Sec. 1. In each case in which an oil and gas mineral lease has heretofore been granted or may hereafter be granted by the State of Texas on an area covered by the coastal waters of the State or within the Gulf of Mexico and in which the War Department of the United States refuses to grant a permit to the lessee or owner of such lease to drill a well thereon for oil, gas or other minerals (the area included in such lease being within the navigable waters of the United States) and in the event the primary term of such lease should expire during the period of time in which the War Department of the United States may continue to refuse to issue such permit, then and in such event the primary term of such lease is hereby extended for successive periods of one (1) year from and after the end of the original primary term of such lease while and so long as the War Department may continue such refusal to issue to the lessee or to the owner of such lease a permit to drill for oil, gas or other minerals, on the area covered thereby; provided, that in order to make such extensions effectual the lessee or the owner of such lease shall, during each of the annual periods during which the primary term of the lease is so extended, apply to and seek to obtain from the War Department a permit to drill a well for oil, gas or other minerals on the area covered by such lease and be unsuccessful in its attempts to obtain a permit, or, if successful in obtaining a permit, commence operations for drilling a well upon the leased premises within sixty (60) days after obtaining such permit; and provided further that the lessee or the owner of such lease continues to pay the annual renewal rentals at the rate provided for in such lease for the period of time involved in such extensions. Should such lease be so extended and should the War Department at any time while such lease is still in force and effect issue a permit to the lessee or to the owner of such lease to drill a well thereon for oil, gas or other minerals, such lease shall continue in force and effect if the lessee commences drilling operations upon the leased premises within sixty (60) days after obtaining such permit, and so long as the lessee or the owner of such lease shall continue to conduct drilling or mining operations thereon, or if oil, gas or other mineral be discovered thereon by the lessee or the owner of such lease, so long as oil, gas or other mineral is produced from such leased premises. Should the production of oil, gas or other mineral on said leased premises after once secured, cease from any cause, such lease shall not terminate if the lessee or owner



of such lease commences additional drilling, reworking or mining operations within thirty (30) days thereafter or if it be within the original primary term of such lease, commences or resumes the payment or tender of rental on or before the rental paying date, if any, next ensuing; but if there be no rental paying date next ensuing, the lease shall in no event terminate prior to the expiration of the primary term.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lessee or owner of said lease such instrument in writing in the nature of an extension of said lease as may be necessary or proper to carry into effect the foregoing provisions of this Act.

[Acts 1941, 47th Leg., p. 456, ch. 287.]

### 3. SOLD ASYLUM AND SCHOOL LANDS

#### Art. 5367. School and Asylum Lands

The State hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

[Acts 1925, S.B. 84.]

#### Art. 5367a. Commissioner's Duty to Ascertain Bonus and Rental Money Due State

##### Duty of Commissioner

Sec. 1. It shall be the duty of the Commissioner of the General Land Office to ascertain and determine as soon as practicable the amounts of bonus and rental money due the State and by whom due as a result of the execution of oil and gas leases by owners of the soil as agents of the State under the provisions of the Relinquishment Act. The term "Relinquishment Act," as used in this Act, refers to and includes Chapter 81, Printed Acts of the Second Called Session of the 36th Legislature and the amendment thereof enacted by the First Called Session of the 37th Legislature.<sup>1</sup>

<sup>1</sup> Article 5367 and article 5368 et seq.

##### Cash or Deferred Payments of Rental or Bonus Due State

Sec. 2. When the Land Commissioner has ascertained and determined the amounts due the State, and by whom due, as in Section 1 of this Act provided, in every case where he finds that the lessee in an oil and gas lease executed by a land owner under the terms and conditions of the Relinquishment Act is indebted to the State under the terms and provisions of said Relinquishment Act, and in every case

where the Land Commissioner finds that a lessor, who executed an oil and gas lease under the terms and provisions of the Relinquishment Act, has received bonus and rental money under such lease and has failed to remit to the State that portion of such bonus and rental money due the State under the terms of said Relinquishment Act, all such indebtedness shall be paid to the State in cash; or if any such lessee or lessor is unable to pay said indebtedness in cash, such lessee or lessor shall file with the Land Commissioner an affidavit to the effect that such debtor is unable to pay such debt in cash. In addition to the affidavit of the debtor, the Land Commissioner may require such additional affidavits or substantiating evidence as he may deem sufficient to establish the true condition of the debtor's financial condition. Upon the filing of such affidavit and additional proof, if required, and the finding of the Land Commissioner that the affidavit speaks the truth, the debtor shall pay one-twentieth ( $\frac{1}{20}$ ) of the debt found to be due in cash and make and execute an obligation to the State for the balance due which obligation shall provide for the payment of the balance in twenty (20) equal annual payments, the first of which shall be due and payable one (1) year after the date of the obligation, and a similar payment each year thereafter until the twenty (20) deferred annual payments have been made. The obligation shall be in the form of a promissory note and shall bear interest at the rate of four per cent (4%) per annum, and such interest shall be payable annually; principal and interest shall be payable at Austin, Travis County, Texas, and all past due interest and principal shall bear interest at the rate of five per cent (5%) per annum. The note shall provide that failure to pay any installment of principal or interest when due, shall, at the option of the State to be exercised by the Attorney General, mature the whole amount of said indebtedness and cause same to become then due and payable.

##### Purpose of Act

Sec. 3. If the courts should hold that the Legislature may not grant an extension of time in which to pay said debts to those unable to pay in cash without granting the same extension upon like terms and conditions to those who are able to pay, then and in that event, it is the intent and purpose of the Legislature in enacting this law that all debts due the State for bonus and rental money arising from the execution of any oil and gas lease under the provisions of the Relinquishment Act may be paid by the debtor executing the obligation as provided in Section 2 of this Act.

##### Release of State's Lien

Sec. 4. Nothing in this Act shall ever be construed as releasing any lien that the State may now have to secure the indebtedness due the State after the same has been ascertained and determined and the obligation executed, nor shall the liability of any party be changed.

**Demand and Collection**

Sec. 5. When the amount of indebtedness mentioned in Section 1 of this Act has been ascertained and determined, the Land Commissioner shall make demand upon the debtor for the payment of the amount due, and unless the debtor pays such obligation in cash within ninety (90) days or executes his obligation in lieu thereof as provided in Section 2 within such time, the Attorney General shall take such steps as in his opinion are necessary or proper for the immediate collection of such obligation.

**Suit by State; Limitations**

Sec. 6. No suit may be instituted or maintained by the State for the collection of any debt due the State for bonus and rental money because of the execution of any oil and gas lease under the provisions of the Relinquishment Act until the Land Commissioner has ascertained the amount of such debt and the debtor has had an opportunity to make affidavit of inability to pay, as provided in this Act; and providing further that no suit may be instituted or maintained for any debt or alleged debt due the State for bonus and rental money under the Relinquishment Act, unless such suit be instituted within five (5) years from and after the date this Act becomes effective, but this limitation shall not apply to the obligation made to the State as provided in Section 2 of this Act, or to any suit for the collection of such debt where the State in its petition alleges that the affidavit of inability to pay made by the debtor is false or fraudulent, and such allegation is established to the satisfaction of the court trying said cause.

**Not Applicable to Bonus or Rental in Escrow or Held in Suspense**

Sec. 7. The terms and provisions of this Act shall not apply to any bonus or any rental money derived from a lease on any section or part of a section of land producing oil or gas at the effective date of this Act, or that has theretofore produced oil and/or gas in commercial or paying quantities, or to any indebtedness due the State which may accrue subsequent to the date this Act becomes effective, or to any debt due the State for bonus or rental where such amount has not been paid to the landowner, but has been placed in escrow or held in suspense by the lessee.

**Partial Unconstitutionality**

Sec. 8. If any section, clause, provision or sentence of this Act contained should ever be held to be unconstitutional, such holding shall not affect the remaining portions of this Act, it being the intent of the Legislature that effect shall be given to so much of this Act as may be valid, even if a portion of this Act shall be held invalid.

**Pending Suits**

Sec. 9. The provisions of this Act shall not apply to the obligations of any lessee for the

collection of which suit was pending in any court of the state on May 22, 1933.

[Acts 1933, 43rd Leg., p. 560, ch. 183.]

**Art. 5368. Sale and Lease by Agent**

The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the State ten cents per acre per year of sales and rentals; and in case of production shall pay the State the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

[Acts 1925, S.B. 84.]

**Art. 5368a. Unconstitutional**

This article derived from Acts 1931, 42nd Leg., p. 28, ch. 23, known as the Relinquishment Act of 1931, and relating to the amount payable to the state, was declared invalid in its entirety by the Supreme Court in *Empire Gas & Fuel Co. v. State*, 121 T. 138, 47 S.W.2d 265. This holding of invalidity was recognized by the Supreme Court in the later case of *Colden v. Alexander*, 141 T. 134, 171 S.W.2d 328.

**Art. 5368b. Repealed by Acts 1949, 51st Leg., p. 477, ch. 259, § 4****Art. 5369. Offset Wells**

If oil and/or gas should be discovered in commercial quantities on lands not included in this law and within one thousand (1,000) feet of and draining land that is so included, or in any case where land so included in this law is being drained by production of oil or gas from land not so included, the owner, lessee, sub-lessee, receiver or other agent in control of land included herein shall in good faith begin the drilling of a well or wells upon such land within one hundred (100) days after such well or wells on lands not so included commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably develop the land included hereunder and to protect such land against drainage by wells on other lands in the locality.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 881, ch. 474, § 1; Acts 1949, 51st Leg., p. 1096, ch. 559, § 1.]

**Art. 5370. Failure to Drill Offset**

If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign

officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the records of said office. Upon proper showing by the owner of the forfeited lease within thirty (30) days after the declaration of forfeiture, the lease may, at the discretion of the Commissioner and upon the terms of this Act and such other terms as he may prescribe, be re-instated. If such lease be not re-instated within such time, or if the Commissioner finds that any unleased land included in this law is being drained, the Commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within one hundred (100) days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the Commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the County Clerk of the county wherein the land is situated. The rights of any owner of the soil which may have ipso facto terminated under prior laws shall be re-instated and are hereby re-instated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein re-instated shall be subject to the terms and provisions of this Act.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 881, ch. 474, § 1; Acts 1949, 51st Leg., p. 1096, ch. 559, § 1.]

#### Art. 5371. Lease of Oil and Gas After Forfeiture

When the relinquishment herein granted has been so forfeited by the Commissioner, the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. No lease shall be executed which provides for a royalty of less than one-eighth ( $\frac{1}{8}$ ), payable to the state for the benefit of the Permanent Free School Fund, and the lessee shall in every case pay to the surface owner amounts equal to the bonus money and the delay rentals paid to the State, and in case of production such lessee shall pay to the surface owner amounts equal to one-half ( $\frac{1}{2}$ ) of all royalty above the reserved one-eighth ( $\frac{1}{8}$ ). Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, or if no acceptable offer is received for such lease after due advertisement, the rights of the sur-

face owner to act under this law shall be ipso facto re-instated.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 881, ch. 474, § 1; Acts 1949, 51st Leg., p. 1096, ch. 559, § 1.]

#### Art. 5372. Forfeiture of Rights

If any person, firm or corporation operating under this law shall fail or refuse to make the payment of any sum within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this law.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 881, ch. 474, § 1; Acts 1949, 51st Leg., p. 1096, ch. 559, § 1.]

#### Art. 5373. Rights of Subsequent Purchaser

If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State. A relinquishment to the State of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 881, ch. 474, § 1; Acts 1949, 51st Leg., p. 1096, ch. 559, § 1.]

#### Art. 5374. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13

#### Art. 5375. Operation Under Permit

The owner of a permit or combination of permits shall have eighteen months from the date or average date thereof in which to begin drill-

ing a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.

[Acts 1925, S.B. 84.]

#### Art. 5376. Lease Under Permit

If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the Commissioner within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals.

[Acts 1925, S.B. 84.]

#### Art. 5377. Payments Under Permit

The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the State ten cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil ten cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said Commissioner shall forfeit the same by an indorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of ten cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the Land Office relating to such permits.

[Acts 1925, S.B. 84.]

#### Art. 5378. Relinquishment Under Permit

The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the Land Office within sixty days after its execution, with one dollar as a filing fee.

[Acts 1925, S.B. 84.]

#### Art. 5379. Damages to Soil

The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

[Acts 1925, S.B. 84.]

### 4. GENERAL PROVISIONS

#### Art. 5380. Payment of Royalty

All royalties shall be paid to the State on or before the last day of each month for the preceding month during the life of the lease, accompanied by the affidavit of the owner, manager or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the area, and the market value of the oil and gas, together with a copy of gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of amount produced and put into pipelines, tanks, or pools and gas lines or gas storage. The books and accounts, receipts and discharges of all lines, tanks, pools and meters and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at any time be subject to inspection and examination by the Commissioner, the Attorney General, the Governor, or the representative of either.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 912, ch. 400, § 5, eff. June 8, 1967; Acts 1969, 61st Leg., p. 1687, ch. 545, § 2, eff. June 10, 1969.]

#### Art. 5381. Form of Payments

All payments shall be in the form of cash, bank draft on some State or National bank in Texas, post-office or express money order, or such other form as the law may prescribe for making remittances to the State Treasury, and shall be due and payable to the Commissioner at Austin.

[Acts 1925, S.B. 84.]

#### Art. 5382. Lien

The State shall have a first lien upon all oil and gas produced upon any lease area to secure the payment of all unpaid royalty and other sums that may become due hereunder.

[Acts 1925, S.B. 84.]

Art. 5382a. Repealed by Acts 1953, 53rd Leg., p. 27, ch. 20, § 1

**Art. 5382b. Surveys and Investigations of Areas Within Tidewater Limits**

**Areas Within Tidewater Limits Defined**

Sec. 1. When used in this Act the term "areas within tidewater limits" means islands, salt water lakes, bays, inlets, marshes and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

**Commissioner Defined**

Sec. 2. When used in this Act the word "Commissioner" means "The Commissioner of the General Land Office."

**Permits for Surveys and Investigations**

Sec. 3. The Commissioner is hereby authorized to issue permits for geological, geophysical and other surveys and investigations of areas within tidewater limits which are not then subject to valid and subsisting oil and gas leases executed by the State of Texas; provided, however, that any person owning a valid and subsisting oil and gas lease executed by the State of Texas, or having permission from the owner of such lease, shall be entitled to conduct such geological, geophysical and other surveys and investigations on the areas included therein without obtaining a permit, but such surveys and investigations shall be conducted in accordance with the rules and regulations promulgated by the Commissioner.

**Rules and Regulations**

Sec. 4. All geological, geophysical and other surveys and investigations on areas within tidewater limits shall be made under such rules and regulations as the Commissioner may promulgate to prevent the unnecessary pollution of waters, destruction of fish, oysters and other marine life, and obstruction of navigation. It shall be the duty of the Commissioner to follow the recommendation of the Game, Fish and Oyster Commission to prevent unnecessary pollution of waters, destruction of fish, oysters, and other marine life, and obstruction of navigation.

**Deposits and Payments**

Sec. 5. Before any permit is issued on unleased areas within tidewater limits the applicant for such permit shall deposit with the Commissioner a sum of money equal to Fifty Dollars (\$50) per day for the term for which it is desired that the permit be issued. A separate permit shall be obtained and deposit made for each geological or geophysical party or part thereof engaged in making surveys and investigations. All deposits shall be held by the Commissioner in a special trust fund until the survey or investigation has been completed and the permittee has filed with the Commissioner a report under oath of the number of days during which the actual work of such surveys or investigations was conducted on the area cov-

ered by the permit. Thereafter, the Commissioner shall deposit in the State Treasury for the Permanent School Fund a sum equal to Fifty Dollars (\$50) per day for the number of days during which the actual work of such survey and investigation was so conducted. The remaining portion of the deposit shall be returned to the applicant who made same.

The Commissioner or the Attorney General shall make demand for payment at the same rate per day from any person, firm or corporation which has heretofore conducted or may hereafter conduct such surveys on areas described herein without a permit or lease from the State. Upon refusal to pay, the Attorney General shall institute suit for such sums, or for the reasonable value of the privilege exercised, as damages for the unauthorized use of such property.

**Unlawful Surveys and Investigations; Explosives**

Sec. 6. It shall be unlawful for any person to conduct geological, geophysical and other surveys and investigations on areas within tidewater limits without having permit therefor, or without being the owner of the oil and gas leasehold estate thereon, or having permission from the owner thereof. It shall be lawful for the owner of any oil and gas leasehold estate on areas within tidewater limits, or for any person having permission from such owner, or for any person holding a permit issued hereunder, to use all reasonable methods including but not limited to the use of explosives in making such surveys and investigations.

**Violations of Act**

Sec. 7. Any person violating any provision of this Act or any provision of any permit issued hereunder, or any rule or regulation promulgated by the Commissioner, shall be deemed guilty of a misdemeanor and upon a conviction in a court of competent jurisdiction shall be subject to a fine of not less than One Hundred Dollars (\$100) and not more than One Thousand Dollars (\$1,000), and each day of such violation shall be considered a separate offense.

**Offering for Lease**

Sec. 7a. All areas within tidewater limits shall be offered for lease in accordance with existing laws except that said areas shall be advertised for a period of thirty (30) days prior to the lease sale date.

**Partial Invalidity**

Sec. 9. If any section, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining portions of this Act, but the remainder of the Act shall be given effect as if such invalid, unconstitutional, or inoperative portion had not been included.

[Acts 1949, 51st Leg., p. 603, ch. 321; Acts 1951, 52nd Leg., p. 343, ch. 214, § 1.]

**Art. 5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949**

All oil and gas leases sold at a sale held on June 7, 1949 by the School Land Board of the State of Texas, and issued by the Commissioner of the General Land Office under the seal of his office, covering areas within tidewater limits which were advertised and offered for lease on June 7, 1949 as the lease sale date, by advertisement for not less than thirty (30) days prior to June 7, 1949, and prior to June 6, 1949, the effective date of Chapter 321, page 603, Acts of the 51st Legislature, 1949,<sup>1</sup> are hereby ratified and title validated and confirmed in the lessees named in such leases, their heirs, successors or assigns, subject only to the terms and provisions of said leases and the laws applicable thereto; however, nothing herein shall validate, affect, or apply to any such oil and gas lease which is not otherwise valid and in force on the effective date of this Act.

[Acts 1953, 53rd Leg., p. 440, ch. 128, § 1.]

<sup>1</sup> Article 5382b.

**Art. 5382c. Agreements for Operation of Areas as a Unit**

Sec. 1. Subject to the provisions of this Act, the Commissioner of the General Land Office, on behalf of the State of Texas or any fund belonging thereto, is authorized to execute agreements that provide for the operation of areas as a unit for the exploration, development, and production of oil and gas, or either of them, and to commit to such agreements the royalty interests in oil and gas, or either of them, reserved to the State or any fund thereof by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully made by an official, board, agent, agency, or authority of the State; provided (a) that agreements that commit such royalty interests in lands set apart by the Constitution and laws of this State for the Permanent Free School Fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, are approved by the School Land Board, and are executed by the owners of the soil if they cover lands leased for oil and gas under the Relinquishment Act, Articles 5367 to 5379, inclusive, Revised Civil Statutes of Texas, 1925, as amended; (b) that agreements that commit such royalty interests in lands or areas other than those mentioned in the preceding clause (a) of this Section 1, are approved by the board, official, agent, agency, or authority of the State vested with authority to lease or to approve the leasing of said lands or areas for oil and gas; and (c) that any such agreement is found by the Commissioner of the General Land Office to be to the best interest of the State.

Sec. 2. Any agreement authorized to be executed under the provisions of this Act may provide: (1) that operations incident to the

drilling of a well upon any portion of a unit shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof; (2) that the production allocated by the agreement to each tract included in a unit shall, when produced, be deemed for all purposes to have been produced from such tract; (3) that the agreement and/or lease, with respect to the interest of the State, shall remain in force as long as oil and gas, or either of them, is produced from the unit in paying quantities and royalties paid to the State thereon; (4) that the royalties reserved to the State or any fund thereof as aforesaid on production from any tract or portion thereof included within the unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement; and (5) such other things as the board, official, agent, agency or authority of the State vested with authority to lease or approve the leasing of said lands may deem necessary for the protection of the interests of the State.

Sec. 3. The provisions of this Act are and shall be held and construed to be cumulative of all laws of this State on the subject treated of and embraced in this Act, and those prior laws in conflict herewith to the extent only that they may be in conflict are hereby repealed.

Sec. 4. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding.

[Acts 1951, 52nd Leg., p. 254, ch. 150.]

**Art. 5382d. Lease of Lands of State Departments, Board and Agencies****Boards for Lease**

Sec. 1. There is hereby created Boards for lease of lands owned by any department, Board or Agency of the State of Texas, which Boards for Lease shall consist of the Commissioner of the General Land Office, who shall be chairman, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and the particular president or chairman of the Board or agency, or head of the department charged with the responsibility of management or control of lands now owned by, or that may hereafter be owned by, or held in trust for, the use and benefit of said department, agency or Board. The title of each Board hereby created shall be selected by each Board for Lease at its first meeting after the effective date of this Act. Each Board for Lease shall keep a complete record of all of its proceedings. A majority of each Board for Lease shall constitute a quorum for the transaction of business by that particular Board. Each Board for Lease shall select a secretary who shall be nominated by the Commissioner of the General Land Office and approved by a majority of the particular Board for Lease.

## Lands Which May Be Leased

Sec. 2. All lands or any parcel of same now owned by, or that may hereafter be owned by, or held in trust for the use and benefit of, a Department, Agency or Board may be leased by the appropriate Board for Lease to any person or persons, firms, or corporations subject to and as provided for in this Act, for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling and disposing of the oil, gas or other minerals.

## Survey and Subdivision; Abstracts of Title

Sec. 3. Each Board for Lease is hereby authorized to cause the lands subject to its control to be surveyed or subdivided into such tracts, lots or blocks as will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of oil, gas or mineral leases thereon, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. Each Board for Lease is further authorized to obtain authentic abstracts of title to all of the lands subject to its control as it may deem necessary, and to take such steps as may be necessary to perfect a merchantable title to such lands.

## Placing Leases on Market; Advertisement; Bidding

Sec. 4. Whenever in the opinion of the appropriate Board for Lease there shall be such a demand for the purchase of oil, gas or mineral leases on any lot or tract of land subject to the control of the Board as will reasonably insure an advantageous sale, the Board for Lease shall place such oil, gas or mineral leases on the market in such tract or tracts as the Board for Lease may designate. The Board for Lease shall insert in at least four daily newspapers in at least three issues of each, thirty days in advance of a sale date, an advertisement to the effect that leases will be offered for sale on a certain date and that lists describing the land to be leased may be obtained from the General Land Office. Bidding shall be by sealed bid, and the bids will be opened at ten o'clock A.M. on the sale date by a majority of the Board for Lease.

## Bids

Sec. 5. A separate bid shall be made for each tract offered for lease. No bid shall be accepted which offers a royalty of less than  $\frac{1}{8}$  of the gross production of oil, gas or other minerals, and no bid shall be accepted which offers a cash bonus of less than Two (\$2.00) Dollars per acre; this minimum bonus and royalty may be increased at the discretion of the Board for Lease. Every bid shall carry the obligation to pay an amount not less than One (\$1.00) Dollar per acre annual rental beginning with the second year of the lease, such amount to be fixed by the Board in advance of the advertisement. The bid shall further name the amount of cash bonus offered in addition to the royalty and rental provided for, and shall be accompanied by cash, or checks collec-

tible in Austin, Texas, payable to the Commissioner of the General Land Office, to cover such amount. The Board may at its discretion fix the rental and royalty and provide for bidding on a basis of the highest cash bonus offered, or it may fix the cash bonus and rental and provide that the bidding shall be on a basis of the highest royalty offered. The Board for Lease shall have the right to reject any and all bids, but unless the Board elects to reject any and all bids, it shall be required to accept the highest bid submitted.

## Minutes

Sec. 6. All awards or leases shall be issued by the Commissioner of the General Land Office in accordance with the minutes as approved by the appropriate Board for Lease. The minutes shall show the fact of acceptance of a bid or the rejection of a bid and the approval of the minutes will constitute the approval of the act of acceptance or the act of rejection, as the case may be.

## Term of Leases; Mineral Leases Separate

Sec. 7. Leases issued by the Commissioner of the General Land Office shall be for a primary term not to exceed five years and as long thereafter as oil, gas or other minerals covered by such lease is produced therefrom in paying quantities, provided that all leases for minerals, except oil and gas, shall be granted on separate leases and for separate considerations.

## Operations Subject to Laws and Orders of Regulatory Authority

Sec. 8. Operations for drilling or mining oil, gas or other minerals and the production of same under any lease issued under the authority given in this Act shall be subject to all laws of the State of Texas and valid orders made by the Railroad Commission of Texas, or other regulatory authority controlling the development of leases for the production of oil, gas or other minerals, and such other regulations as the appropriate Board for Lease, at its discretion, may adopt.

## Rentals and Royalties; Examination of Books, Accounts, Etc.

Sec. 9. Beginning with the second year of the lease and annually thereafter for each of the following years during the life of said lease, the lessee shall pay the annual rental specified by the Board for Lease unless oil, gas or other minerals are being produced in paying quantities. When royalties paid during any year during the life of the lease equal or exceed the annual rental, no annual rental will be due for the following year; otherwise, there shall be due and payable on or before the anniversary date of said lease the annual rental specified by the Board for Lease less the amount of royalties paid during the preceding year. All rental and royalty payments shall be paid to the Commissioner of the General Land Office at Austin, Texas, and royalty payments shall be paid on or before the last day of each month following the month in which the oil,

gas or other minerals may be produced. The payments shall be accompanied by sworn statements of the lessee, manager, or other authorized agent showing the gross amount of production since the last report and the market value of same, together with copies of all daily gauges of tanks, gas meter readings, pipeline run tickets and receipts and other checks or memoranda of the amounts produced. The books, accounts, records, and contracts pertaining to production, transportation, sale and marketing of the oil, gas or other minerals shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General and the Chairman, President or other member of the appropriate Board for Lease or the representative of either of them. The State shall have a first lien upon all oil, gas or other minerals produced from the area covered by the lease to secure the payment of all unpaid royalty and/or other sums of money that may become due under the lease.

#### Duty of Lessee

Sec. 10. The lessee shall reasonably develop the lease by drilling or mining to such extent as the facts may justify. The lessee shall adequately protect the oil, gas or other minerals under the land covered by the lease from drainage from adjacent lands or leases. Neither the bonus, rentals nor royalties, paid or to be paid under said lease, shall relieve the lessee from such obligations. If oil and/or gas should be produced in paying quantities from a well on land privately owned, which well is within one thousand feet of the area covered by the lease, or in any case where the land covered by the lease is being drained, the lessee shall, within sixty days after such initial production on private land begin in good faith and prosecute diligently the drilling of an offset well on the area covered by his lease. Such offset well shall be drilled to such depth as may be necessary to prevent the undue drainage of the area covered by the lease and the lessee, manager, or driller shall use all means reasonably necessary in a good faith effort to make such offset well produce in paying quantities.

#### Assignments and Relinquishments

Sec. 11. All rights purchased may be assigned. All assignments must be recorded in the county or counties where the area is located and the recorded assignment or a certified copy of same shall be filed in the General Land Office within one hundred days from the date of the first acknowledgment thereof, accompanied by ten cents (10¢) per acre for each acre assigned and a filing fee of One (\$1.00) Dollar; and if not so filed and payment made, the assignment shall not be effective. All rights to any whole tract or to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties where the area is located and filing the recorded re-

linquishment or certified copy of same in the General Land Office, accompanied by a filing fee of One (\$1.00) Dollar. Such relinquishment shall not have the effect of releasing the lessee from any obligation or liability theretofore accrued in favor of the State.

#### Forfeiture of Leases

Sec. 12. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due, either as rental on the lease or for royalty on production, within thirty days after it shall become due, or if such owner or his authorized agent should knowingly make any false return or false report concerning production, royalty, or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith, as required by his lease and the rules and regulations adopted by the appropriate Board for Lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to operations under his lease or if such owner or his authorized agent should knowingly fail to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when forfeited the area shall again be subject to lease to the highest bidder, under the same regulations controlling the original sale of leases. Forfeitures may be set aside and the lease and all rights thereunder reinstated at any time before the rights of a third party intervene upon satisfactory evidence to the Commissioner of the General Land Office of future compliance with the provisions of this Act and the rules and regulations that may be adopted relative hereto.

#### Surveys and Investigations

Sec. 13. The appropriate Board for Lease is hereby authorized to issue permits for geological, geophysical and other surveys and investigations on lands subject to lease by the Board for Lease, which are not then subject to valid and subsisting leases, for such consideration and under such terms and conditions as said Board for Lease may deem to the best interest of the State of Texas, and which will encourage the development of said lands for oil, gas or other minerals.

#### Grant of Easements for Irrigation Canals, Flumes, Ditches; Telephone, Telegraph, Electric Power and Pipe Lines

Sec. 13a. The appropriate board for lease is authorized to grant easements on the land covered by this Act for irrigation canals, laterals, flumes and ditches, telephone, telegraph and electric power lines, and pipe lines for the gathering or transportation of oil, gas, water and other fluids or substances, together with such devices, equipment and appurtenances as may be necessary. Such easements may be granted on such terms and conditions as the



board for lease may deem to the best interest of the State of Texas. Provided, that the provisions of this Section 13a shall not apply to lands owned by the State of Texas as a part of the penitentiary system nor shall this Act be construed as repealing House Bill No. 330, Acts of the 48th Legislature of the State of Texas, Regular Session, 1943, Chapter 177, page 281, being Article 6203d, Vernon's Texas Civil Statutes, or any amendments thereto.

#### Filing in General Land Office

Sec. 14. All surveys, files, records, abstracts of title, copies of sale and lease contracts and all other records pertaining to the sale and leases hereby authorized shall be filed in the General Land Office and shall constitute archives thereof.

#### Repealer; Application of Act

Sec. 15. All laws and parts of laws in conflict herewith are hereby expressly repealed; provided, however, that the provisions of this Act shall not be construed to apply to those lands dedicated by the Constitution and laws of the State to the Public Free School Fund, the University of Texas, or lands donated to the Board of Regents of the University of Texas, as Trustees, by a will, instrument in writing, or otherwise in trust for a scientific, educational, or other charitable or public purpose, nor to any other land under the control of the Board of Regents of the University of Texas; nor shall the terms of this Act apply to any lands whose title is vested in the State for use and benefit of any part of the Texas A & M College System, or to lands under the control of the Board of Directors of the Agricultural and Mechanical College of Texas; nor shall the provisions of this Act apply to land subject to lease under the provisions of Subdivision 3, Chapter 4, Title 86 of the Revised Statutes of the State of Texas, 1925, and amendments thereto commonly known as the "Relinquishment Act"; provided further, that should title to any lands subject to the provisions of the Relinquishment Act be acquired by any Department, Board or Agency of the State, such lands shall not be subject to lease by any Board herein created, but shall be leased in the same manner as is now or may hereafter be provided for the leasing of unsold Public Free School Lands.

#### Deposit and Expenditure of Receipts

Sec. 16. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of special funds to be known as the "(appropriate Department, Board or Agency) Special Mineral Fund", which funds are hereby created, and shall be used exclusively for the benefit of the appropriate Department, Board or Agency; provided, however, no money shall ever be expended from these funds except by legislative appropriation and then for the purposes and in the amounts stated in the Act appropriating same. Provided however, that all monies re-

ceived under the provisions of this Act enuring to the benefit of the Game, Fish and Oyster Commission shall be deposited in the State Treasury to the credit of the "Special Game and Fish Fund".

#### Expenses of Executing Law

Sec. 17. The expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer, and for that purpose the sum of Ten Thousand (\$10,000.00) Dollars or so much thereof as may be necessary is hereby appropriated for the biennium ending August 31, 1953, out of any monies in the State Treasury not otherwise appropriated, after which time expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer against the income from the Special Funds accumulated from leases, rentals, royalties, and other payments.

#### Partial Unconstitutionality

Sec. 18. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding.

[Acts 1951, 52nd Leg., p. 556, ch. 325; Acts 1955, 54th Leg., p. 670, ch. 239, § 1; Acts 1963, 58th Leg., p. 1138, ch. 442, § 2; Acts 1967, 60th Leg., p. 913, ch. 400, § 6, eff. June 8, 1967.]

#### Art. 5382d-1. Tender of Payment of Special Fee; Percentage of Bid on Mineral Lease and Land Sales

Sec. 1. After September 1, 1955, on all mineral lease and land sales held by the School Land Board as created by Section 5, Chapter 3, Acts of the 46th Legislature, 1939, and on all mineral lease sales held by the Boards for Lease created by Chapter 325, Acts of the 52nd Legislature, 1951,<sup>1</sup> each bidder shall be required to remit by separate check an amount equal to one per cent (1%) of each bid payable to the Commissioner of the General Land Office as a special sale fee, and the special payments on only the high bids accepted by the Boards shall be deposited by the Commissioner in the State Treasury as a special fund.

It is further provided, however, that failure to remit the special fee shall not, of itself, render a bid void; but the Commissioner shall demand payment thereof before issuing a lease to the successful bidder; provided further, that if the successful bidder should fail or refuse to make such payment within thirty (30) days from and after demand by the Commissioner, he shall not be entitled to a lease upon the tract covered by his bid and the cash bonus shall be automatically forfeited to the State and the Commissioner shall deposit same in the State Treasury to the credit of the Permanent Free School Fund or the appropriate Special Mineral Fund as the case may be. All such checks submitted by unsuccessful bidders shall be returned to such bidders with their bid checks.

Sec. 2. Monies deposited in the special fund provided in Section 1 of this Act, or so much thereof as may be necessary, are hereby appropriated to the General Land Office for the payment of travel expenses, fees for professional services, office supplies and expenses, and equipment, subject to the applicable provisions of House Bill No. 140, 54th Legislature, 1955;<sup>2</sup> for the payment of salaries and wages of such additional personnel as may be required; and for the payment of salary increases, provided that such salary increases paid from the funds appropriated in this Act shall be limited to positions for which salary rates of less than Ten Thousand Dollars (\$10,000) per annum are specified in said House Bill No. 140, and that the amount of such salary increases shall never exceed Six Hundred Dollars (\$600) per annum.

It is further provided that additional positions established, and any salary increases granted, pursuant to the provisions of this Act shall be reported in writing to the Legislative Budget Board prior to the effective date of such additional positions and salary increases.

[Acts 1955, 54th Leg., p. 1119, ch. 415.]

<sup>1</sup> Article 5382d.

<sup>2</sup> Acts 1955, ch. 519.

#### Art. 5382e. Continuation or Extension of Leases After Expiration of Primary Term

Sec. 1. Each valid and subsisting mineral lease of oil and gas heretofore issued by the Commissioner of the General Land Office of Texas covering rivers, channels, unsold school lands, both surveyed and unsurveyed, or any area within tidewater limits, including islands, lakes, salt water lakes, bays, inlets, marshes, the bed of the sea, and that portion of the Gulf of Mexico now or hereafter within the jurisdiction of the State of Texas, shall be amended by the Commissioner of the General Land Office by instrument in writing, upon application of lessee, to provide, and each such lease issued hereafter shall provide:

(a) That in the event production of oil or gas on the leased premises after once obtained shall cease from any cause at the expiration of the primary term thereof or at any time or times thereafter, such lease shall not terminate if the lessee commences additional drilling or reworking operations within sixty (60) days thereafter, and such lease shall remain in full force and effect so long as such operations continue in good faith and in workmanlike manner, without interruptions, totaling more than sixty (60) days during any one such operation; and if such drilling or reworking operations result in the production of oil or gas, such lease shall remain in full force and effect so long as oil or gas is produced therefrom in paying quantities or payment of shut-in gas well royalties or compensatory royalties is made as hereafter provided in this Act or as pro-

vided elsewhere in the statutes of the State of Texas;

(b) That if at the expiration of the primary term or at any time thereafter there is located on the leased premises a well or wells capable of producing gas in paying quantities and such gas is not produced for lack of a suitable market and such lease is not being otherwise maintained in force and effect, the lessee may pay as royalty a sum of money equal to double the annual rental provided for in such lease, but in no event to be less than Twelve Hundred (\$1200.00) Dollars per annum for each well capable of producing gas in paying quantities, such payment to be made prior to the expiration of the primary term of the lease, or, if the primary term has expired, within sixty (60) days after the lessee ceases to produce gas from such well; and if such payment is made, the lease shall be considered to be a producing lease and such shut-in gas well royalty payment shall extend the term of the lease for a period of one (1) year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased; and thereafter if no suitable market for such gas exists, the lessee may extend the lease for four (4) additional and successive periods of one (1) year each by the payment of a like sum of money each year on or before the expiration of the extended term. Provided, however, that if, while such lease is being maintained in force and effect by payment of such shut-in gas well royalty, gas should be sold and delivered in paying quantities from a well situated within one thousand (1,000) feet of the leased premises and completed in the same producing reservoir or in any case where drainage is occurring, the right to further extend the lease by such shut-in gas well royalty payments shall cease but such lease shall remain in force and effect for the remainder of the current one (1) year period for which the shut-in gas well royalty has been paid, and for an additional period not to exceed five (5) years from the expiration of the primary term by payment by the lessee of compensatory royalty, at the royalty rate provided for in such lease, of the value at the well of production from the well completed in the same producing reservoir from which gas is being sold and delivered and which is situated within one thousand (1,000) feet of, or draining, the leased premises on which such shut-in gas well is situated, such compensatory royalty to be paid monthly to the Commissioner of the General Land Office beginning on or before the last day of the month next succeeding the month in which such gas is sold and delivered from the well situated within one thousand (1,000) feet of, or draining, the leased premises and complet-

ed in the same producing reservoir; provided further, that in the event such compensatory royalties paid in any twelve (12) month period are in a sum less than the annual shut-in gas well royalties provided for in this section, lessee shall pay a sum of money equal to the difference within thirty (30) days from the end of such twelve (12) month period; provided further, that nothing herein shall relieve the lessee of the obligation of reasonable development, nor of the obligation to drill offset wells as required by Article 5359, Revised Civil Statutes of 1925.

Sec. 2. If, at the expiration of the primary term of any Oil or Gas lease heretofore or hereafter issued by the Commissioner of the General Land Office covering areas described in Section 1 hereof, production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted thereon in good faith and in good and workmanlike manner, the lessee may, on or before the expiration of the primary term, file in the General Land Office written application to the Commissioner of the General Land Office for a thirty (30) day extension of such lease, accompanied by payment of Three Thousand Dollars (\$3,000.00) for six hundred forty (640) acres or less, and Six Thousand Dollars (\$6,000.00) for more than six hundred forty (640) acres, and the Commissioner shall, in writing, extend such lease for a thirty (30) day period from and after the expiration of the primary term and so long thereafter as oil or gas is produced in paying quantities; provided further, that lessee may, so long as such drilling operations are being conducted, make like application and payment during any thirty (30) day extended period for an additional extension of thirty (30) days and, upon receipt of such application and payment, the Commissioner shall, in writing, again extend the lease so that same shall remain in force for such additional thirty (30) day period and so long thereafter as oil or gas is produced in paying quantities; provided, however, that no lease shall be extended under the provisions of this section for more than a total of three hundred ninety (390) days from and after the expiration of the primary term unless production in paying quantities has been obtained."

Sec. 3. In the event any section or part of section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections or parts of sections of the Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional, or inoperative section or any part of section or provision had not been included.

[Acts 1953, 53rd Leg., p. 672, ch. 255; Acts 1967, 60th Leg., p. 913, ch. 400, § 7, eff. June 8, 1967; Acts 1971, 62nd Leg., p. 1075, ch. 227, § 1, eff. May 17, 1971.]

**CHAPTER FIVE. MINERALS  
[REPEALED]**

**Arts. 5383 to 5403. Repealed by Acts 1967, 60th Leg., p. 35, ch. 16, § 10, eff. March 15, 1967.**

Acts 1967, 60th Leg., p. 35, ch. 16, classified as article 5421c-10, provides in part, in § 10, that rights, powers, duties and obligations conferred or imposed by the repealed laws shall be governed by such laws.

**CHAPTER SIX. PATENTS**

**Article**

- 5404. Requisites of Patent.
- 5405. Doubtful Claim.
- 5406. Church and Schoolhouse Sites.
- 5407. Patents on Surveys in Two Counties.
- 5408. Conflicting Surveys.
- 5409. Conflicting Title; Cancellation.
- 5410. Cancellation; Partial Conflict.
- 5411. Purchase Money Refunded.
- 5411a. Refunds to Purchasers and Lessees Where Funds to Which Payments are Accredited are Not Entitled to the Moneys.
- 5412. Order of Issue.
- 5413. Issuance and Delivery.
- 5414. Deceased Patentee.
- 5414a. Validating Patents on Lands Lying Across, or Partly Across Water Courses or Navigable Streams.
- 5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams.
- 5414b. Unconstitutional.
- 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law.

**Art. 5404. Requisites of Patent**

Every patent for land emanating from the State shall be issued in the name and by authority of the State, under the seal of the State and of the land office, signed by the Governor and countersigned by the Commissioner; and before the delivery thereof to the party entitled thereto, it shall be registered in the land office patent book.

[Acts 1925, S.B. 84.]

**Art. 5405. Doubtful Claim**

Should it appear to the Commissioner from the records of his office or from information on oath given him that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the Attorney General, whose written decision shall be sufficient authority for him to issue or withhold the patent.

[Acts 1925, S.B. 84.]

**Art. 5406. Church and Schoolhouse Sites**

The Commissioner is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any public school or asylum lands, as sites for cemeteries, churches or schoolhouses. When the land is desired as a location for a schoolhouse, the patent shall issue to the county judge of the proper county and his successors in office

in trust for that purpose; and when desired for a church house or a cemetery; it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and be filed in the Land Office, and shall be entitled to credit on his account with the State for the value thereof. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be.

[Acts 1925, S.B. 84.]

**Art. 5407. Patents on Surveys in Two Counties**

The Commissioner shall issue patents upon all surveys of land in two or more counties where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys occasioned by a county boundary passing through them; provided, the field notes have been recorded in the office of the county surveyor of both counties.

[Acts 1925, S.B. 84.]

**Art. 5408. Conflicting Surveys**

Where conflicts exist between surveys, the Commissioner shall issue patents to such portions of such surveys as are free from conflicts.

[Acts 1925, S.B. 84.]

**Art. 5409. Conflicting Title: Cancellation**

Where a patent to land through mistake is issued upon any valid claim for land, which is afterwards found to be in conflict with any older title, it shall be competent for the owner of such patent, or of any part of the land embraced therein, and within such conflict, to return the same to the Commissioner for cancellation, or in case the owner of such land in conflict cannot obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof. In either case he shall make and file with said Commissioner an affidavit that he is still the owner of the same, and has not sold or transferred it. If it appears from the Land Office records or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for the Commissioner to cancel the patent, or such part thereof as shall appear to belong to the party so applying.

[Acts 1925, S.B. 84.]

**Art. 5410. Cancellation: Partial Conflict**

In cases where there is only a partial conflict, the Commissioner may, under like circumstances and in like manner as provided in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for

such portion of the land covered by his patent as may not be in conflict with the older title, where from the field notes the same may be done.

[Acts 1925, S.B. 84.]

**Art. 5411. Purchase Money Refunded**

Upon proper proof that money has been in good faith paid into the State Treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents cannot legally issue, or upon lands on which patents have issued and afterwards are legally canceled, the Comptroller may issue his warrant in favor of the proper parties for the amounts so paid. Proof of such payments may be made upon the certificate of the Commissioner thereto when such facts are disclosed by the records of the Land Office. This article shall not apply to surveys, the errors in which may be corrected.

[Acts 1925, S.B. 84.]

**Art. 5411a. Refunds to Purchasers and Lessees Where Funds to Which Payments are Accredited are Not Entitled to the Moneys**

Sec. 1. Upon proper proof as hereinafter provided, the Comptroller of the State of Texas is hereby authorized and directed to draw his warrant in refund of monies paid into the State Treasury on public lands in good faith but where the funds to which such monies may be accredited or may have been accredited, are not entitled thereto in any of the following instances:

(a) Through error made in good faith, to be supported by the official signature of the Commissioner of the General Land Office, or of the Attorney General, to whom such payment is made;

(b) Where the payment is made in accordance with law, but title cannot issue or possession cannot pass, because of conflict in boundaries, erroneous sales, erroneous lease or other cause;

(c) In case of sale of leased lands;

(d) Where lease money has been paid on previous forfeited sales, the same having been reinstated and all interest paid;

(e) Where erroneous timber sales or leases have been made;

(f) Where overpayments have been made in final payments to the State Treasurer due to decreased acreage or other causes;

(g) Where reduction has been made in acreage of timber sold or leased;

(h) Where payments are made or have been made in good faith by claimants of lands in instances where the applicants have no right to purchase said lands as revealed by investigations of titles as provided by law.

Sec. 2. All refunds herein provided for are to be paid out of the respective funds to which said payments have been made or may be ac-

credited after specific appropriations have been made according to law, and all claims for refunds except those embraced in sub-division (a) of Section 1 shall be certified by the certificate of the Commissioner of the General Land Office, and all such claims shall be verified by the affidavit of the claimant and approved by the Attorney General as to the correctness of the claim and as to whom due, provided that the money so paid by any purchasers or lessees in case of sale of land by the purchaser, or assignment of the lease by the lessee after payment of such money, shall be refunded so that such refund shall be paid to the person upon whom the loss falls in case of failure of title, or right of possession.

[Acts 1945, 49th Leg., p. 190, ch. 145.]

#### Art. 5412. Order of Issue

The Commissioner shall patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the Land Office or the order of application; but an application made for patent on any claim accompanied by the office fees therefor shall have preference over claims for which no application has been made; provided, such surveys have been regularly mapped, or there is sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office.

[Acts 1925, S.B. 84.]

#### Art. 5413. Issuance and Delivery

The Commissioners shall issue patents when it appears from the books of his office that full payment for the land has been made where payment is required, and all legal fees due thereon have been paid into said office and not withdrawn, including the legal fees for the recording of said patent in the counties in which the land may be located. When one applies for a patent such person, shall, in addition to all other payments required by law, remit to the land office one dollar for each county in which the land may be wholly or partially located and give the name and address of the owner or agent. When the patent is ready for delivery the Commissioner shall send it by registered mail to the clerk of any such county with the receivers check for one dollar for each such county and accompany the same with the name and address of the owner or his agent. Upon receipt thereof the clerk shall record the patent and send the same by registered mail with such name and address and the remaining fees to the clerk of another proper county until the patent has been recorded in each such county, and thereupon the patent shall be delivered to the proper party by registered mail.

[Acts 1925, S.B. 84.]

#### Art. 5414. Deceased Patentee

All patents issued in the names of persons deceased at the time of issuance shall convey

and secure valid title to the heirs or assignee of such deceased persons.

[Acts 1925, S.B. 84.]

#### Art. 5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Sec. 1. All patents to and awards of lands lying across or partly across water courses or navigable streams and all patents and awards covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the lands, and minerals therein contained, lying across, or partly across watercourses or navigable streams, which lands are included in surveys heretofore made, and to which lands patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, and the State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the beds, and minerals therein contained, or water courses or navigable streams, and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, patents or awards have been issued and outstanding for a period of ten years from the date thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams, and provided further that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall relinquish or quit-claim any number of acres of land in excess of the number of acres of land conveyed to said patentees or awardees in the original patents granted by the State, but the patentees or awardees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same patent or award; provided that this Act shall not in any way affect the State's title, right or interests in and to the sand and gravel, lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or

Mexican Governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas as valid.

[Acts 1929, 41st Leg., p. 298, ch. 138.]

**Art. 5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams**

Sec. 1. All deeds of acquittance to lands lying across or partly across water courses or navigable streams and all deeds of acquittance covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the lands, and minerals therein contained, lying across, or partly across water courses or navigable streams, which lands are included in surveys heretofore made, and to which lands deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited; and the State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the beds, and minerals therein contained, of water courses or navigable streams and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams; and provided further, that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall the State of Texas relinquish or quit claim any number of acres of land in excess of the number of acres of land conveyed to said grantees in the deeds of acquittance granted by the State, but the grantees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same deed of acquittance; provided that this Act shall not in anyway affect the State's title, right or interest in and to the sand and gravel lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or Mexican governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas, as valid.

Sec. 4. No provision of this Act shall affect the rights of any parties involved in pending litigation at the effective date of this Act. The provisions of this Act are and shall be held and construed to be cumulative of all laws of this State on the subject treated of and embraced in this Act. All laws or parts of laws in conflict herewith are hereby repealed. If any section, subdivision, paragraph, sentence or clause of this Act shall be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding. [Acts 1955, 54th Leg., p. 660, ch. 232.]

**Art. 5414b. Unconstitutional**

This article, derived from Acts 1931, 42nd Leg., p. 193, ch. 114, § 1, validated and confirmed titles under preemption surveys and homestead donations where there had been use and occupancy for 25 years, and directed the issuance of patents. In *Armstrong v. Walker*, 123 T. 508, 73 S.W.2d 520, the Commission of Appeals, in an opinion adopted by the Supreme Court, held it void because in violation of Const. art. 7, § 4, relating to the disposal of lands set apart to the public free school fund.

**Art. 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law**

That in any case where any land in the State of Texas was titled prior to the adoption of the Common Law on March 20, 1840, and there has been a judicial finding that the original grantee of said land abandoned said land prior to the adoption of the Common Law, and the State of Texas has at any time instituted suit for the recovery of said land, resulting in a final judgment adverse to the State of Texas whether on demurrer, exception, or a jury finding of fact, it shall be conclusively presumed that those now claiming said land under conveyance from, or judgment against, the original grantee or his heirs, are vested with all title to said land which was vested in said original grantee by virtue of any patent or title from the sovereignty of the soil to him.

[Acts 1933, 43rd Leg., p. 398, ch. 156.]

**CHAPTER SEVEN. GENERAL PROVISIONS**

**Article**

- 5415. Public Domain.
- 5415a. Gulfward Boundary Fixed; Sovereignty Over Waters, Beds and Shores of Gulf; Permanent Public Free School Fund, Lands Granted to.
- 5415b. Adjacent Territory Acquired Under Convention Between United States and Mexico; Acceptance by State; Inclusion in Counties and Water Improvement or Conservation Districts.
- 5415b-1. Acceptance of Jurisdiction Over Ceded Land.
- 5415c. Survey of Gulf Coast Line; Determination of Low Water Contour; Agreements with Federal Agencies.
- 5415d. State Beaches; Right of Public to Free and Unrestricted Use and Enjoyment.

Article

- 5415d-1. Public Beaches Bordering Gulf; Maintenance; State Funds.
- 5415d-2. Public Beaches Bordering Gulf; Denial of Access by Posting, etc.; Penalty.
- 5415d-3. Counties Bordering Gulf; Beach Park Boards; Powers.
- 5415d-4. State-Owned Beaches Bordering Gulf; Business Establishments; Licenses.
- 5415e. Repealed.
- 5415e-1. Coastal Public Lands Management Act of 1973.
- 5415f. State-Owned Submerged Lands and Islands; Sale or Leasing of Surface Estate; Moratorium.
- 5415g. Gulf Coast and Public Beach Areas; Excavation of Sand, etc., Permits.
- 5415h. Barrier Islands and Peninsulas Bordering Gulf; Protection of Sand Dunes.
- 5416. Repealed.
- 5416a. Repealed.
- 5417. University Fund.
- 5418. Asylum Fund.
- 5419. Unlawful Inclosures.
- 5420. Adverse Claimant; Suit.
- 5421. Suits for Minerals and Timber.
- 5421a. Lands Involved in Oklahoma Boundary Suit.
- 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake.
- 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries.
- 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created.
- 5421c-1. Excess Acreage Where Tract of Land Titled or Patented.
- 5421c-2. Mineral Leases Under Relinquishment Act.
- 5421c-3. Control and Disposition of Lands Set Apart for Permanent Free School Fund and Asylum Funds and Mineral Estate Within Tidewater Limits; Dedication of Mineral Estate to Permanent School Fund; School Land Board, Creation and Duties; Board of Mineral Development Abolished.
- 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board.
- 5321c-5. Leasing of Islands, Salt Water Lakes, Bays, Inlets, Marshes, and Certain Other Lands; Determination of Price.
- 5421c-6. Patents Validated.
- 5421c-7. Prospecting State Lands for Minerals, Including Fissionable Materials.
- 5421c-8. School Land Board; Authority to Charge Appraisal Fee; Disposition; Refund of Unused Fees.
- 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations.
- 5421c-10. Leasing of Certain Minerals.
- 5421c-11. Sulphur Production Agreements.
- 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision.
- 5421c-13. Expired.
- 5421d. Patents to Lands Formerly Claimed as in New Mexico.
- 5421e. Division of Profits Between State and United States from Land Improvements.
- 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands.
- 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts.
- 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326.
- 5421g. Expired.
- 5421h-1. Repealed.
- 5421h-2. Repealed.
- 5421i. Suspension of Running of Primary Term of Oil and Gas Lease Pending Litigation.

Article

- 5421j. Grant of Filled-in Land to City of Corpus Christi.
- 5421j-1. Lease of Filled-in Land by City of Corpus Christi.
- 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State.
- 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission.
- 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County.
- 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County, Conveyance to State Highway Commission.
- 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation.
- 5421l. Control of Certain Property in Austin Transferred to University Regents.
- 5421m. Veterans' Land Board.
- 5421n. Leases by Cities, Towns and Political Subdivisions; Pooling Provisions and Unit Operations.
- 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect.
- 5421p. Lease of Lands of Political Subdivisions.
- 5421q. Taking Park, Recreational, etc., Land for Other Public Use; Notice; Hearing.
- 5421r. Lists of Public Lands for Sale or Lease; Reproducing, Preparing, Selling or Furnishing.
- 5421z. Indian Affairs.
- 5421z-1. Transfer of Trust Responsibilities Respecting the Tigua Indian Tribe.

**Art. 5415. Public Domain**

To bring the provisions of law relating to the public domain together, the following extract is made from the joint resolutions of the Congress of the United States for annexing Texas to the United States, approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct," etc.

[Acts 1925, S.B. 84.]

**Art. 5415a. Gulfward Boundary Fixed; Sovereignty Over Waters, Beds and Shores of Gulf; Permanent Public Free School Fund, Lands Granted to**

Sec. 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds E. to the farthermost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grande River.

Sec. 2. Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Arti-

cle 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

Sec. 3. The State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

Sec. 4. This Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act.

[Acts 1941, 47th Leg., p. 454, ch. 286; Acts 1947, 50th Leg., p. 451, ch. 253, § 1.]

**Art. 5415b. Adjacent Territory Acquired Under Convention Between United States and Mexico; Acceptance by State; Inclusion in Counties and Water Improvement or Conservation Districts.**

Sec. 1. The State of Texas hereby accepts the Act of Congress approved February 9, 1940, H.R. 6124, 54 Stat. 21,<sup>1</sup> and hereby accepts as part of its territory, and hereby assumes civil and criminal jurisdiction over, all those certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the Government of the United States of America by virtue of the convention between the United States of America and the United Mexican States signed February 1, 1933.

Sec. 2. All of said parcels or tracts of land acquired by the State of Texas in the manner stated in Section 1 of this Act, shall constitute and form part of the respective counties within whose boundaries they shall lie, by extending the present county boundary lines to the Rio Grande, and said parcels or tracts of land shall be subject to the civil and criminal jurisdiction of said counties; and any of such parcels or tracts of land that may lie partly in one county and partly in another county, shall be surveyed by the county surveyors of both counties, whose duty it is to ascertain the portion of said parcels or tracts of land that lie within the jurisdiction of their respective counties, and they shall file the field notes of said lands in the county surveyor's office of their respective counties, together with a true map of said parcels or tracts of land, in the map records of the county; and for such purposes the boundary lines of said parcels or tracts of land as giv-

en by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries. It shall also be the duty of the county surveyors of the counties in this State, within whose boundaries said parcels or tracts of land shall lie, to report to the tax assessor of their respective counties the quantity of land thus acquired by their respective counties, within ninety (90) days after the effective date of this Act.

Sec. 3. Any of the parcels or tracts of land acquired by the State of Texas in the manner stated in Section 1 hereof, lying adjacent to, or contiguous to a water improvement district or conservation and reclamation district, formed and organized under the laws of Texas, may be included within such water improvement or conservation and reclamation district, by means of a written contract entered into between the owners of title to such land and the board of directors of such district, which said written contract shall specifically describe the land to be included in such district, the character of water service to be furnished to said land, and the terms and conditions upon which said lands are to be included within said district. When said contract shall have been executed by the owners of title to said land, and the board of directors of said district, the same shall be acknowledged by the parties, in the manner and form required in the acknowledgment of deeds, the same shall be recorded in the deed records of the county in which said lands are situated.

Sec. 4. Nothing in this Act contained shall be construed to affect the ownership of said lands.

[Acts 1943, 48th Leg., p. 278, ch. 175.]

<sup>1</sup> Act Feb. 9, 1940, c. 22, 54 Stat. 21.

**Art. 5415b-1. Acceptance of Jurisdiction Over Ceded Land**

Sec. 1. The State of Texas hereby accepts as part of its territory, and assumes civil and criminal jurisdiction over, the tract or parcel of land lying adjacent to the State of Texas which was acquired by the United States of America from the United Mexican States by virtue of the Convention for the Solution of the Problem of the Chamizal, signed August 29, 1963, and ceded to Texas by Act of Congress. Said land shall be a part of El Paso County.

Sec. 2. Nothing herein shall affect the ownership of said land.

[Acts 1969, 61st Leg., p. 2050, ch. 705, eff. June 12, 1969.]

**Art. 5415c. Survey of Gulf Coast Line; Determination of Low Water Contour; Agreements with Federal Agencies**

Commissioner of General Land Office; Agreements with Federal Agencies

Sec. 1. The Commissioner of the General Land Office is hereby authorized and directed to negotiate and consummate an agreement, or



agreements, with the appropriate agency of the Federal Government of the United States, whereby the General Land Office and such appropriate agency of the Federal Government may enter into contracts or agreements with the United States Coast and Geodetic Survey, or other appropriate governmental agency, for a survey of the Texas Gulf Coast line, by projection, protraction, ground surveying or other recognized surveying methods, for the purpose of determining the low water contour along said Gulf Coast line from which the three marine league boundary line may be accurately fixed by metes and bounds, demarking the boundary of Texas as defined in the Submerged Lands Act (Public Law 31, 83d Congress, Ch. 65, 1st Sess., H.R. 4198, 67 Stat. 29).<sup>1</sup>

**Aerial Mosaic Survey; Official Records and Archives**

Sec. 2. The survey of the low water contour as herein authorized may be developed by using a basic traverse line delineated from controlled aerial mosaic survey sheets and contact prints depicting the Texas coast, as made and compiled by Jack Ammann Photogrammetric Engineers, Inc., of an aerial survey made from December 31, 1953, to May 17, 1954, and filed in the General Land Office of the State of Texas on October 19, 1954. The controlled aerial mosaic sheets and contact prints herein described are hereby declared to be official records and archives of the General Land Office of the State of Texas.

**Cooperation with Federal Agencies**

Sec. 3. The Commissioner of the General Land Office is hereby authorized and directed to furnish without cost to any governmental agency, copies of papers, maps, records, documents and all other data on file in, or compiled by, the General Land Office pertaining to or affecting the determination of boundaries by and between the State of Texas and the United States of America on the Continental Shelf, and to furnish other facilities of his office in co-operation with the appropriate agency or agencies of the Federal Government in the matter of boundary determination and/or the exploration and development of the minerals in submerged areas under the jurisdiction of the State of Texas.

**Field Notes, Maps, Etc.; Filing as Permanent Records; Admissibility in Evidence**

Sec. 4. The field notes, maps or other documents compiled as a result of the survey accomplished pursuant to this Act shall be filed in the General Land Office as permanent records and archives and the same, or certified copies thereof, shall be admissible in evidence as are other papers, documents and records and certified copies thereof of such office.

**Reports of Results of Survey**

Sec. 5. The Commissioner of the General Land Office shall report the results of the survey herein authorized to the Governor, Lieuten-

ant Governor, Speaker of the House and Members of the Fifty-sixth Legislature so that the necessary Legislative action can be taken to approve the location and demarkation of the three marine league boundary of Texas.

[Acts 1957, 55th Leg., p. 1388, ch. 477.]

<sup>1</sup> 43 U.S.C.A. § 1301 et seq.

**Art. 5415d. State Beaches; Right of Public to Free and Unrestricted Use and Enjoyment**

**Declaration of Policy**

Sec. 1. It is hereby declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association or other legal entity to create, erect or construct any obstruction, barrier, or restraint of any nature whatsoever which would interfere with the free and unrestricted right of the public, individually and collectively, to enter or to leave any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association, or other legal entity to create, erect, or construct any obstruction, barrier or restraint which would interfere with the free and unrestricted right of the public, individually and collectively to the lawful and legal use of, any property abutting upon or contiguous to the state-owned beach bordering on the seaward shore of the Gulf of Mexico upon which the public has acquired a prescriptive right.

Be it provided, however, that nothing in this Act shall prevent any agency, department, institution, subdivision or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty or other structure as an aid to navigation, protection of the shore, fishing, safety or other lawful purpose authorized by the Constitution or laws of this state or of the United States.

The requirements of free and unrestricted rights of ingress and egress over areas landward of the line of vegetation shall be deemed to be fully satisfied by access roads or ways,

now existing and available to the public, or which by or with the approval of any governmental authority having jurisdiction, may be provided in the future.

Be it provided further, that nothing in this Act shall be construed as in any way affecting the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicular traffic by public road or by beach.

Be it provided further, that none of the provisions of this Act shall apply to the beaches on those islands or peninsulas that are not accessible by a public road or ferry facility, so long as such condition shall exist.

**Actions; Prima Facie Evidence of Right of User and Prescriptive Easement in Public**

Sec. 2. In any action brought or defended under this Act or whose determination is affected by this Act a showing that the area in question is embraced within the area from mean low tide to the line of vegetation shall be prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;

(2) there has been imposed upon the area subject to proof of easement a prescriptive right or easement in favor of the public for ingress and egress to the sea.

**Definitions**

Sec. 3. a. The term "line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland. In any area where there is no clearly marked vegetation line (as, for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be had to the nearest clearly marked line of vegetation on each side of such unmarked area to determine the elevation reached by the highest waves of the Gulf. The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side. In the event the elevation of the two points on each side of the area are not the same, then the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points; provided, however, that where there is no clearly marked line of vegetation, such extended line shall in no event extend inland further than two hundred (200) feet from the seaward line of mean low tide. The "line of vegetation" shall not be affected by the occasional sprigs of salt grass upon the mounds or dunes, or seaward from them, and shall not be affected by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area. Where

such changes have been made, and thus the vegetation line has been obliterated or has been created artificially, then the line of vegetation shall be determined in the same manner as in those areas where there is otherwise no clearly marked "line of vegetation"; however, where there is a vegetation line consistently following a line more than two hundred (200) feet from the seaward line of mean low tide, this two hundred (200) foot line shall constitute the landward boundary of the area subject to public easement until such time as a final court adjudication shall establish this line in another place.

b. The term "highest waves" means the highest swell of the surf with such regularity that vegetation is prevented, and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

c. The term "beach" as used herein means that area subject to public use and easement as defined in Section 1.

d. "Person" as used herein includes natural persons, corporations and associations.

e. "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

**Construction of Term "Public Beaches"**

Sec. 4. Nothing herein shall in any way reduce, limit, construct or vitiate the definition of public beaches as defined from time immemorial in law and custom.

**Injunction; Protection of Rights of Ingress and Egress**

Sec. 5. The Attorney General, any County Attorney, District Attorney, or Criminal District Attorney of the State of Texas is hereby authorized and empowered, and it shall be his, or their duty to file in the District Court of Travis County, Texas, or the county wherein such property is situated, actions seeking either temporary or permanent court orders or injunctions to remove any obstruction or barrier, or prohibit any restraint or interference, restricting the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from the state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation, in the event the public has acquired a right to use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, or any property abutting upon or contiguous to the state-owned beach bordering on the Gulf of Mexico upon which the public has acquired a prescriptive right, and in such proceedings, the Attorney General, County Attorney, District Attorney, or Criminal District Attorney, shall also be empowered to bring an action seeking recovery of the costs of removing any obstruction or barrier if the same be removed by public authorities pursuant to any order of such court.

## Declaratory Judgment Suits

Sec. 6. Any littoral owner whose rights may be determined or affected by this Act shall be permitted to bring suit for a declaratory judgment against the State of Texas to try such issue or issues. Service of citation in such cases may be had by serving the Attorney General of Texas.

## Study Committee

Sec. 7. Because of certain problems peculiar to the various beaches of Texas, a study committee is hereby authorized to study the development of those beaches. The committee shall be composed of three (3) Representatives to be appointed by the Speaker of the House of Representatives, three (3) Senators to be appointed by the Lieutenant Governor of the state, and, as ex officio members, the Land Commissioner of the State of Texas, or a representative appointed by such Land Commissioner, the Chief Engineer of the Highway Department of the State of Texas, or a representative appointed by such Chief Engineer, and one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years. The expense incurred by the legislative members of the committee in performing their duty shall be payable one-half out of the Contingent Expense Fund of the House and one-half out of the Contingent Expense Fund of the Senate. Such interim committee shall examine into the special conditions prevailing as to the shore line in the various areas, and shall file its report to the Legislature, whether in Special or General Session, at the earliest time compatible with the performance of its duties. The report shall include recommendations for legislation, including the following subjects:

a. The most practical method of procuring the right-of-way necessary for construction of essential parallel highways and for vehicular parking areas (to facilitate access to the beach) all to be situated landward and above the beach;

b. Method of procuring easements for egress and ingress between such parking areas and the beach;

c. Procedure for negotiation and execution of cooperative agreements between the state and affected landowners for acquisition by gift or purchase of such rights-of-way and easements;

d. Recognition of rights in such landowners to construct works, including groins, for the protection of their property and meeting the standards to be prescribed in such legislation;

e. Method of negotiations with landowners for additional easements or deeds for park areas adjacent to the beach, for the use and pleasure of the public, provided such lands or easements can be obtained without cost to the state;

f. Any change necessary to bring general legislation into conformity with the fixed procedures applicable to National Seashore Areas, to the extent that lands along the coast may be designated to a National Seashore Area; and

g. Such other related matters as in the opinion of the interim committee should be included in such report so as to facilitate the development of Texas beaches as public recreational areas and to further their development as a tourist attraction.

## Regulation of Motor Vehicle Traffic on Beaches; Littering Beaches; Violations; Penalties

Sec. 8. (a) The Commissioners Court of a county bordering on the Gulf of Mexico or its tidewater limits may by order regulate motor vehicle traffic on a beach within the boundaries of the county. It may also prohibit by order the littering of such beach and to this end may define the term "littering."

(b) Before a Commissioners Court may adopt an order authorized by Subsection (a) of this Section, it must

(1) publish notice in at least one newspaper having general circulation in the county of its intention to adopt the order;

(2) in the notice, state the time and place of a public hearing on the proposed order and state that interested persons may obtain copies of the proposed order from the Commissioners Court;

(3) make copies of the proposed order available to interested persons;

(4) more than two weeks, but less than one month, after the notice is published, conduct a hearing at the time and place stated in the notice, at which it must allow all interested persons to express their views on the proposed order; and

(5) in the case of a traffic regulation, provide in the order for signs, designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited, as the case may be.

(c) The Commissioners Court may, in an order duly adopted under Subsections (a) and (b) of this Section, provide the following criminal penalties for violation of the order:

(1) for a first conviction, a fine not exceeding \$50.00;

(2) for a second conviction, a fine not exceeding \$200; and

(3) for a conviction subsequent to the second, a fine not exceeding \$500 or imprisonment in the county jail not exceeding 60 days or both such fine and imprisonment.

(d) If an order duly adopted under Subsections (a) and (b) of this Section conflicts with

a General Law of this state, the order controls over the state law and in case of violation prosecution may be maintained only under the order.

**Power of City, Town or Village to Regulate Traffic  
and to Prohibit Littering of Beaches;  
Regulatory Ordinances**

Sec. 9. This Act<sup>1</sup> shall not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any body of water adjacent thereto to regulate motor vehicle traffic and prohibit littering on a beach within its corporate limits. In the event such regulatory ordinances are passed by such a city, town, or village, and such ordinance conflicts with a General Law of this state, or with an order of the Commissioners Court adopted under this Act, the ordinance controls over the state law, and over such order, and in case of violation, prosecution may be maintained only under the ordinance.

<sup>1</sup> Acts 1965, 59th Leg., p. 1515, ch. 659.

**Right to Use Public Beaches**

Sec. 10. The right of the public to use the public beaches defined in this Act<sup>1</sup> remains inviolate subject only to orders duly adopted by a Commissioners Court under this Act and to ordinances enacted by an incorporated city, town, or village.

[Acts 1959, 56th Leg., 2nd C.S., p. 108, ch. 19; Acts 1963, 58th Leg., p. 1138, ch. 442, § 16; Acts 1965, 59th Leg., p. 1515, ch. 659, §§ 2, 3, eff. June 18, 1965.]

<sup>1</sup> Acts 1965, 59th Leg., p. 1515, ch. 659.

Section 1 of the amendatory act of 1965 provided:

"The regulation of traffic and prohibition of littering on the public beaches is of great concern both to the residents of Gulf Coast counties and to those of the state at large. The variety of existing needs and conditions, the ever-changing area and nature of our beaches, and the myriad interests of the counties in whose boundaries the beaches lie require above all else flexible solutions to the traffic and littering problems. The Legislature accordingly finds that

"(1) the continued enjoyment by the people of this state of our public beaches necessitates the orderly regulation of vehicular traffic and prohibition of littering on these beaches; and

"(2) it is impracticable, if not impossible, to prescribe by General Law, applicable to each of our public beaches, regulations and prohibitions which would realistically accommodate the legitimate interests of the local governments most directly concerned.

"It is therefore the purpose of this Act to authorize the Gulf Coast counties to adopt, within the limitations herein prescribed, regulations and prohibitions suited to the conditions and needs prevailing within their boundaries."

**Art. 5415d-1. Public Beaches Bordering Gulf;  
Maintenance; State Funds**

**Declaration of Purpose and Policy**

Sec. 1. (a) It is the purpose of this Act to allocate responsibility for cleaning the beaches of this state, and to preserve and protect local initiative in the maintenance and administration of beaches.

(b) The public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or continuous use,

creates a responsibility for the state, in its position as trustee for the public, to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined by Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Vernon's Texas Civil Statutes).

(c) The provisions of this Act shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches. The administration of public beaches, the selection of personnel, and, insofar as is consistent with the purposes of this Act, the determination of the best uses of the funds provided by this Act, shall be reserved to the several political subdivisions receiving funds under this Act.

**Applicability of Act**

Sec. 2. This Act shall apply to home-rule cities having a population in excess of 60,000 which are situated or border upon the Gulf of Mexico, and to all counties which are situated or border upon the Gulf of Mexico, provided that such city or county making application for funds under this Act has within its boundaries public beaches as defined in this Act.

**Application for State Funds; Conditions**

Sec. 3. Any such county or city seeking state funds under this Act to clean public beaches must first submit an application to the Parks and Wildlife Department. To be approved, such application must:

(a) Provide for the administration or supervision of the public beaches of such county or city by a Beach Park Board of Trustees, County Parks Board, Commissioners Court, or other such administrative body that the Legislature may from time to time authorize, and provide that such Board or agency will have adequate authority to administer an effective program of keeping the public beaches within its jurisdiction clean.

(b) Provide for the receipt by the county or city treasurer, or other officer exercising similar functions if there be no county or city treasurer, of all funds paid to such county or city pursuant to this Act, and provide for the proper safeguarding of such funds by such officer, provide that such funds shall be expended solely for the purposes for which paid, and provide for the repayment by the county or city of any such funds lost or diverted from the purposes for which paid.

(c) Provide that the governing body of such county or city will make such reports as to amounts and categories of expenditures as the Parks and Wildlife Department may from time to time require.

(d) Provide that entrance to all public beaches under the jurisdiction of the governing body of such county or city shall be free of charge. This subsection shall not

be construed to prohibit the assessment of a reasonable fee for off-beach parking, nor shall this subsection be construed to prohibit the assessment of a reasonable fee for the use of facilities provided for the use and convenience of the public.

(e) Provide for the establishment, maintenance, and administration of at least one beach park by such county or city, which shall meet such minimum requirements of size and facilities available to the public as shall be determined by the Parks and Wildlife Department.

#### Approval of Application

Sec. 4. The department shall not approve any application which does not fulfill the conditions specified in Section 3 of this Act.

#### Duties of Cities and Counties Boardering Gulf, and the State

Sec. 5. (a) It shall be the duty and responsibility of the governing body of any incorporated city, town, or village situated or bordering upon the Gulf of Mexico to clean and maintain the condition of all public beaches within its corporate boundaries; provided that such duty shall not extend to any public beach within its corporate boundaries which is owned by the county in which it is located.

(b) It shall be the duty and responsibility of the commissioners court of any county situated or bordering upon the Gulf of Mexico to clean and maintain the condition of all public beaches within its boundaries and not within the boundaries of any incorporated city situated or bordering upon the Gulf of Mexico. It shall further be the duty and responsibility of such commissioners court to clean any public beach owned by the county but situated within the corporate limits of any incorporated city, town or village.

(c) It shall be the duty and responsibility of the State of Texas to clean and maintain the condition of all public beaches located within state parks so designated by the Parks and Wildlife Department.

#### Counties Boardering Gulf; Expenditures

Sec. 6. Pursuant to the duties established by this Act, the commissioners court of any county situated or bordering upon the Gulf of Mexico is hereby authorized to expend from any available fund such sums as it deems necessary to carry out its responsibilities under this Act.

#### Distribution of "State Share" of Funds to Cities and Counties; Emergency Fund

Sec. 7. (a) From the appropriation available therefor, the Parks and Wildlife Department shall from time to time pay to each county or city which has its application approved under Section 3 of this Act, an amount hereinafter referred to as the "state share," provided that no payments shall be made to any such county or city until the department finds that

(1) there will be available in the budget of such county or city not less than \$20,000 for the purpose of cleaning and maintaining public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought, and

(2) there will be available in the budget of such city or county for the purpose of cleaning and maintaining public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought not less than the total amount expended by such county or city for the purpose of cleaning the beaches in the state fiscal year ending August 31, 1969.

(b) The Parks and Wildlife Department shall advise eligible cities and counties on the Gulf of Mexico of a period not less than sixty days after the effective date of this Act within which such eligible cities and counties may apply for a "state share" of beach cleaning funds and counties and cities seeking reimbursement under the provisions of this Act shall submit proposed expenditures for the purpose of cleaning and maintaining public beaches to the Parks and Wildlife Department. The department shall distribute in a fair and impartial manner the "state share" to counties and cities in accordance with procedures and accounting methods to be adopted by the Department.

(c) No county or city shall receive as its "state share" a sum greater than two-thirds of the amount such county or city expends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought. The Department shall allocate the "state share" to eligible counties and cities, taking into account the frequency with which public beaches within the jurisdiction of such counties and cities are used.

(d) The Parks and Wildlife Department is authorized to use not more than 10 per cent of the appropriated funds for any state fiscal year for administrative purposes. The Department is further authorized to withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

#### Contracts Between Cities Boardering Gulf and Situate Counties; Rebates by Department; Off-Beach Parking Fees

Sec. 8. The governing body of any incorporated city situated or bordering upon the Gulf of Mexico which is not entitled to receive funds under this Act, may contract with the commissioners court of the county in which such city is located, for the purpose of allowing such county to clean the beaches within the corporate limits of such city. Such city may apply to the Parks and Wildlife Department for rebates of 40 percent of the contract price, provided that such city need not meet

the terms and conditions imposed in Section 3 of this Act, except as otherwise provided. The department shall make such rebates at the close of each state fiscal year, upon a showing by such city that entrance to all public beaches under the jurisdiction of such city are free of charge.

This Section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking, nor shall this Section be construed to prohibit the assessment of a reasonable fee for the use of facilities provided for the use and convenience of the public.

**Contracts Between Adjacent Counties Bordering Gulf;  
Rebates by Department; Off-Beach Parking Fees**

Sec. 9. The commissioners court of any county which is not entitled to receive funds under this Act, may contract with the commissioners court of any adjacent county which is entitled to receive funds under this Act, for the purpose of allowing such adjacent county to clean the public beaches of the county which is not entitled to receive funds under this Act. Such contracting counties not entitled to receive funds under this Act may apply to the Parks and Wildlife Department for rebates of 40 percent of the contract price, provided that such contracting counties need not meet the terms and conditions imposed in Section 3 of this Act, except as otherwise provided. The department shall make such rebates at the close of each state fiscal year, upon a showing by such county that entrance to all public beaches under the jurisdiction of such county is free of charge. This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking, nor shall this section be construed to prohibit the assessment of a reasonable fee for the use of facilities provided for the use and convenience of the public.

**Discontinuance of Payments to Cities or Counties;  
Failure to Comply With Act; Notice and Hearing**

Sec. 10. If the department finds after reasonable notice and opportunity for a hearing to any county or city receiving funds under the provisions of this Act, that such county or city no longer complies with the requirements of this Act, it shall notify such county or city that further payments will not be made to such county or city until the department is satisfied that there is no longer any such failure to comply.

**Definitions**

Sec. 11. For the purposes of this Act:

(a) "Department" shall mean the Parks and Wildlife Department.

(b) "Public beach" shall mean any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, or has re-

tained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

(c) "Clean and maintain" shall refer to the collection and removal of litter and debris, and to the supervision and elimination of sanitary and safety conditions which would pose a threat to personal health or safety if not removed or otherwise corrected. The phrase "clean and maintain" includes the employment of life-guards, beach patrols, and litter patrols.

**Inapplicability of Act**

Sec. 12. Nothing in this Act shall apply to any beach area not bordering on the Gulf of Mexico. This Act shall not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility, so long as such condition shall exist.

[Acts 1969, 61st Leg., 2nd C.S., p. 128, ch. 17, eff. Sept. 19, 1969; Acts 1973, 63rd Leg., p. 230, ch. 106, §§ 1 to 4, eff. May 18, 1973.]

**Art. 5415d-2. Public Beaches Bordering Gulf;  
Denial of Access by Posting, etc.; Penalty**

Sec. 1. (a) Any person or association of persons, corporate or otherwise, who shall display or cause to be displayed, on any public beach any sign, marker, warning, or who shall make or cause to be made any other communication, written or oral, which states that such public beach is private property or in any other manner states that the public does not have the right of access to such public beach, in violation of the lawful access rights of the public guaranteed by Article 5415d, Revised Civil Statutes of Texas, shall be fined not less than \$10 nor more than \$200.

(b) Each day that such communication is made shall constitute a separate offense.

(c) This Act shall not apply to any island or peninsula that is not accessible by public road or common carrier ferry facility, so long as such condition shall exist.

Sec. 2. Any person or association of persons, corporate or otherwise, violating the provisions of this Act, shall be prosecuted in the county in which such public beach is located.

Sec. 3. For the purposes of this Act, "public beach" shall mean that area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever shall be nearer the line of mean low tide, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

[Acts 1969, 61st Leg., 2nd C.S., p. 132, ch. 18, eff. Sept. 1, 1969.]

**Art. 5415d-3. Counties Bordering Gulf; Beach  
Park Boards; Powers**

**Applicability of Act**

Sec. 1. This Act shall apply to counties which are situated or border upon the Gulf of

Mexico and have within their boundaries beaches which are suitable for park purposes. The suitability of such beaches for park purposes shall be conclusively established when the commissioners court of any such county shall have made a finding that a beach or beaches located within its boundaries but not located within the boundaries of any incorporated city are suitable for park purposes.

This Act shall not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility, so long as such condition shall exist.

Be it further provided, that nothing in this Act shall ever be construed to interfere with, pre-empt, or in any other manner restrict or usurp the authority of the General Land Office over state-owned beaches.

**Beach Park Board of Trustees; Creation  
Authorized; Election**

Sec. 2. Any such county, for the purposes of improving, equipping, maintaining, financing, and operating any such public park or parks, or any facilities owned by such county, or to be acquired by such county, or to be managed by such county under the terms of a written contract, may, after a favorable majority vote of the qualified voters of the county voting at an election held on such proposition, create a board to be designated "Beach Park Board of Trustees," hereinafter sometimes in this Act referred to as the "board." Any such board shall have the powers authorized in and shall perform the duties specified in this Act. Such election shall be called by the commissioners court and notice thereof shall be given in the manner provided by Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended. The ballots shall contain the following proposition: "FOR Establishing a Beach Park Board of Trustees" and the contrary thereof.

**Membership of Board; Terms; Compensation**

Sec. 3. The Beach Park Board of Trustees shall be composed of seven members appointed by the commissioners court, one of whom shall be a member of the commissioners court. Such trustees shall serve for a term of two years from the date of their appointment and any vacancies shall be filled by appointment of the commissioners court; provided that three trustees first appointed shall serve for one year and four shall serve for two years; the original term of each trustee to be designated by the commissioners court. Each trustee shall serve without compensation but shall be reimbursed for all necessary expenses, including traveling, incurred in the performance of his official duties.

**Oath and Bond of Trustees**

Sec. 4. Each trustee so appointed shall within 15 days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the county clerk of such county, payable to such county and approved by the commissioners court thereof.

Such bond shall be in such sum as approved by the commissioners court of such county, but in no event shall it exceed \$5,000. Such bond shall be conditioned upon the faithful performance of the duties of such trustee, including his proper handling of all moneys that may come into his hands in his capacity as a member of the Beach Park Board of Trustees, the cost of such bond to be paid by the board.

**Officers of Board; Meetings; Disposition of Funds**

Sec. 5. At the time of the appointment of the first trustees, the commissioners court shall designate one of the trustees as chairman of the board, who shall serve in that capacity for a period of one year, and annually thereafter the board shall elect a chairman from among its members. The board shall also elect annually from among its members a vice-chairman, a secretary, and a treasurer and the office of secretary and treasurer may be held by the same person. The board shall hold regular meetings at times to be fixed by the board and may hold special meetings at such times as business or necessity may require, which special meetings may be called by the chairman or any three members of the board. The money belonging to or under control of the board shall be deposited and shall be secured in the same manner prescribed by law for county funds.

**Records of Board**

Sec. 6. The board shall keep a true and full record of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof safe or vault. All such records shall be the property of the board and shall be subject to inspection by the commissioners court of such county at all reasonable times. The board may contract with the commissioners court of such county to have the county keep and maintain its records. An annual audit by independent auditors selected by the board shall be made of all financial transactions and records of the board.

**Jurisdiction and Powers of Board**

Sec. 7. All lands used as parks in connection with public beaches but not located within the boundaries of any incorporated city and not within the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Revised Civil Statutes of Texas), and all public beaches owned in fee by the county, shall be under the jurisdiction of the board. The commissioners court of such county may designate any additional parks and facilities owned by the county, or to be managed by the county under the terms of a written contract, to be under the management and control of the board. In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:

- (a) To manage, operate, maintain, equip, and finance any and all existing public

parks, placed under its jurisdiction by the commissioners court;

(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift, but not by the exercise of the power of eminent domain;

(c) To accept, receive, and expend gifts of money or other things of value from any person, group of persons, corporation, or association for the purpose of performing any function, power or authority herein invested in the board;

(d) To advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board;

(e) To accept and receive from the county and to expend such funds as may be appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control;

(f) To enter into contracts, leases, or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any lands under its jurisdiction, or any facilities under its control, and to execute and perform its lawful powers and functions on lands leased from others;

(g) To have general power to make and enter into all contracts, leases, and agreements with persons, associations, and corporations relating to the management, operation, and maintenance of any concession, facility, improvement, leasehold, lands, or other property of any nature whatsoever over which such board shall have jurisdiction and control; provided that the board shall not enter into any such lease or agreement for a longer term than 40 years;

(h) To adopt, promulgate, and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and other such agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties, and compensation. In addition, the board may also employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. For such legal services as it may require the

board may call upon the county attorney of such county and in lieu thereof or in addition thereto the board may employ and compensate its own counsel and legal staff. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on other such instruments as may be required by the board;

(j) To sue and be sued in its own name;

(k) To expend any moneys appropriated by the commissioners court for the purpose of cleaning and maintaining lands within its jurisdiction and public beaches including any moneys appropriated to the commissioners court by the State of Texas for such purpose;

(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board, for the purpose of improving and enlarging public parks and facilities. Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed six percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable but not for less than par and accrued interest, shall be executed by the chairman and secretary of the board, shall be signed by the chairman and the secretary of the board, or shall bear the facsimile signature of either or both, shall display the seal of the board either impressed, printed, or lithographed thereon, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the board shall specify in the resolution or resolutions authorizing such bonds. All bonds issued under the provisions of this Act are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, or other political



corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto;

(m) The board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the county for park purposes after the same have been authorized at an election held in the manner required by law;

(n) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for the original bonds;

(o) To enter into contracts with adjacent counties, with Beach Park Boards in adjacent counties, and with Beach Park Boards in any city of the same county as the board, to accomplish any of the purposes authorized by this Act;

(p) To charge and collect a reasonable fee for access or entrance to, or parking upon, any lands under its jurisdiction other than public beaches owned by the county, or for the use of any facility located on land under the jurisdiction of the board.

**National or State Parks; Jurisdiction**

Sec. 8. The board shall have no jurisdiction over any public beach situated within the boundaries of such county which has been designated a national park, national seashore, or state park.

**Cumulative Effect**

Sec. 9. This Act shall be cumulative of all other laws relating to county parks but this Act shall take precedence in the event of conflict. Specifically, the powers and authorities of the Beach Park Board of Trustees preempts the right of the county Board of Park Commissioners to act with regard to any beach, park, or facility within the jurisdiction of the Beach Park Board of Trustees.

**Home-Rule Cities; Boards**

Sec. 10. The provisions of this Act shall not be construed as prohibiting the creation of, or limiting the lawful actions of, any Beach Park Board of Trustees of any home-rule city as provided for in Article 6081g-1, Vernon's Texas Civil Statutes.

**Public Access to Gulf Coast Areas**

Sec. 11. Nothing in this Act shall be construed to permit any interference whatsoever with any right the public might otherwise have under the provisions of Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Vernon's Texas Civil Statutes), to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Vernon's Texas Civil Statutes), and such rights in the public shall persist as if this Act had not been passed. No county nor county officials nor anyone acting under authority of this Act shall exercise any authority, contract out any right to exercise authority or otherwise delegate authority beyond that specifically granted to it in Section 8 of Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Vernon's Texas Civil Statutes); over such area notwithstanding any of the specific provisions of this Act. It is the intent of the Legislature in passing this Act that the rights established or recognized in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Vernon's Texas Civil Statutes), are to be paramount over any rights or interests which might otherwise be deemed created by this Act, and nothing herein shall trench upon those rights nor encroach upon lands, or interests in land, which may ultimately be held subject to those rights.

[Acts 1969, 61st Leg., 2nd C.S., p. 136, ch. 20, eff. Sept. 19, 1969.]

**Art. 5415d-4. State-Owned Beaches Bordering Gulf; Business Establishments; Licenses**

**Declaration of Policy**

Sec. 1. It is hereby declared and affirmed to be the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes; and any use which substantially interferes with the enjoyment of such beach area by the public shall constitute an offense against the public policy of this state. Be it provided, however, that nothing in this Act shall prevent any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under the laws of this state to regulate safety conditions on any beach area subject to public use.

**Business Establishments at Fixed Locations; Undesirability**

Sec. 2. The Legislature finds that the operation and maintenance of business establish-

ments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

**Mobile Business Establishments; Desirability;  
Application to Department for License**

Sec. 3. The Legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as heretofore described in this Act. Any person desiring to operate a mobile business establishment on any public beach located outside the municipal limits of any incorporated city shall first make written application therefor to the Parks and Wildlife Department.

**Contents of Application; Filing Fee; Territorial Limits**

Sec. 4. (1) Such application shall set forth the name and street address of the applicant; the commodity or commodities to be sold or leased; the limits of the territory within which such mobile business establishment shall operate; and shall include payment of a filing fee in an amount to be determined by the Department, but in no event to exceed \$25. Such fee shall be deposited in the State Treasury in the Land and Water Recreation and Safety Fund 63, and the Department is authorized to fund the expenses of carrying out the provisions of this Act out of this fund.

(2) Any applicant seeking to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment sought to be licensed.

(3) The Department may in its discretion establish maximum territorial limits over which mobile business establishments may operate; provided that such territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in such territory; and further provided that a license to sell or lease only surf boards and related equipment shall in no way be limited as to the territory over which such mobile business establishment may operate.

**Licenses; Issuance**

Sec. 5. Upon a finding that the issuance of a license would be consistent with recreational needs and the public welfare, and that the mobile business establishment authorized thereby

would not create a traffic or safety hazard, the Department shall grant such license, provided that the applicant has complied with the provisions of this Act, and such license shall be valid for one year from the date of issuance thereof. In the event the Department does not grant the application, it shall return the filing fee to the applicant.

**Rules and Regulations**

Sec. 5A. The Department may establish additional rules, regulations, procedures, and conditions necessary or appropriate to carry out the purpose of this Act.

**Assignability and Revocation of License**

Sec. 6. No license shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder, after notice duly delivered by mail to the address of applicant listed on the application for a license.

**Definitions**

Sec. 7. For the purposes of this Act:

(1) "Department" shall mean the Parks and Wildlife Department.

(2) "Public beach" shall mean any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

(3) "Business Establishment" shall mean any structure or vehicle where any commodity or commodities, including memberships in any private club or other such organization, are offered to the public for sale or lease, but shall not include any structure or vehicle where only services are offered to the public for sale.

**Number of Licenses; Multiple Licensees**

Sec. 8. It is the intention of the Legislature that, in addition to the standards already set forth in this Act, the Parks and Wildlife Department shall exercise the authority delegated in this Act according to the following considerations:

(1) That the number of mobile business establishments licensed by the Department not be such as to constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public, as described heretofore in this Act.

(2) That the number of licenses issued by the Department under the provisions of this Act for any public beach in this state be sufficient to insure free and unrestricted competition in the selling or leasing of

commodities to the public; and that no person or association of persons, corporate or otherwise, be allowed to operate a mobile business establishment, or mobile business establishments, on any public beach in restraint of trade or competition, whereby such person or association of persons controls all or substantially all of the business establishments licensed by the Department on such public beach.

**Applicability of Act**

Sec. 9. The provisions of this Act shall not apply to any public beach which is within the boundaries of a state park so designated by the Parks and Wildlife Department, nor shall this Act apply to any remote beach on any island or peninsula not accessible by public road or common carrier ferry facility, for so long as such condition shall exist.

**Restrictions**

Sec. 10. The Department shall not grant any application for a business establishment to be situated at a fixed or permanent location on a public beach, or for any business establishment which does not traverse the beach while doing business, nor shall it grant any application which otherwise does not meet the terms and provisions of this Act.

**Sale of Commodities**

Sec. 10A. Every license granted pursuant to this Act authorizing the sale of commodities on any public beach shall include a prohibition against the sale of any commodity in a glass container; and any person selling any commodity in a glass container on any public beach outside the boundaries of any incorporated city shall suffer an immediate termination and revocation of all rights conferred by such license, as provided in Section 6 of this Act.

**Operation Without License; Penalty**

Sec. 11. Whoever shall, for himself or for or on behalf of or under the direction of another person, or association of persons, corporate or otherwise, operate any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city, without first having obtained a license to operate such business establishment from the Parks and Wildlife Department, shall be fined not less than \$10, nor more than \$200.

[Acts 1969, 61st Leg., 2nd C.S., p. 178, ch. 26, eff. Dec. 9, 1969; Acts 1973, 63rd Leg., p. 229, ch. 105, §§ 1 to 3, eff. May 18, 1973.]

**Art. 5415e. Repealed by Acts 1973, 63rd Leg., p. 421, ch. 185, § 18, eff. Aug. 27, 1973**

See, now, article 5415e-1.

**Art. 5415e-1. Coastal Public Lands Management Act of 1973**

**Short Title**

Sec. 1. This Act may be cited as the Coastal Public Lands Management Act of 1973.

**Policy**

Sec. 2. The surface estate in the coastal public lands of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas. It is the declared policy of this state that such estate be managed pursuant to the following policies:

(a) The natural resources of the surface estate in coastal public lands shall be preserved. Such resources shall be construed to include the natural aesthetic values of those areas and the value of such areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(b) Uses which the public at large may enjoy and in which they may participate shall take priority over those uses which are limited to fewer individuals.

(c) The public interest in navigation in the intracoastal waters shall be protected.

(d) Unauthorized use of coastal public lands shall be prevented.

(e) Utilization and development of the surface estate in such lands shall not be allowed unless the public interest as expressed by this Act is not significantly impaired thereby.

(f) For the purposes of this Act, the surface estate in coastal public lands shall not be alienated except by the granting of leaseholds and lesser interests therein, and by exchanges of coastal public lands for littoral property as provided herein.

(g) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of such rights; and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

**Purpose**

Sec. 3. The purpose of this Act is to implement the foregoing policies by delegating to the School Land Board, which shall be assisted by the planning division and other staff of the General Land Office, certain responsibilities and duties with respect to the management of the surface estate in coastal public lands.

**Definitions**

Sec. 4. As used in this Act, unless the context clearly requires otherwise:

(a) "Board" means the School Land Board.

(b) "Coastal area" refers to the geographic area comprising all the counties of Texas having any tidewater shoreline including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(c) "Coastal public lands" means all or any portion of state-owned submerged

lands, the waters overlying those lands, and all state-owned islands or portions of islands in the coastal area.

(d) "Commissioner" means the Commissioner of the General Land Office.

(e) "Island" means any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(f) "Management program" means the coastal public lands management program called for in this Act, and shall include, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media inventorying coastal public land resources and capabilities, and setting forth objectives, policies, and standards to guide planning and to control the utilization of those resources.

(g) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust or political subdivision or agency of the state.

(h) "Seaward" means the direction away from the shore and toward the body of water bounded by such shore.

(i) "Structure" means any structure, work, or improvement constructed upon, affixed to, or worked upon coastal public lands, including, but not limited to, fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(j) "Submerged lands" means any land extending from the boundary between the lands of the state and littoral owners seaward to the low water mark on any salt water lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath such a body of water, but shall, for the purposes of this Act only, exclude beaches bordering on, and the waters of, the open Gulf of Mexico, and the lands lying beneath such waters.

(k) "Littoral owner", for the purposes of this Act only, means the owner of any public or private upland bordered by or contiguous to coastal public lands.

#### Administration

Sec. 5. The School Land Board is hereby designated the executive agency of the state charged with the administration, implementation, and enforcement of the provisions of this Act. The planning division and other staff of the General Land Office shall assist the board in the discharge of its responsibilities and duties under this Act; and the commissioner is authorized to employ such additional personnel

in the General Land Office as may be necessary for the board to perform such functions effectively.

#### Duties and Authority of the Board

Sec. 6. The board, with the technical advice and assistance of the planning division and other staff of the General Land Office, shall perform the following duties:

(a) The board shall develop a continuing comprehensive coastal public lands management program pursuant to the policies set forth in Section 2 of this Act. The coastal public lands management program shall, in compliance with the Coastal Zone Management Act of 1972 (P.L. 92-583)<sup>1</sup> include the following elements:

(1) A continuous inventory of coastal public land and water resources, which shall include a determination of the extent and location of the coastal public lands;

(2) A continuous analysis of the potential uses to which the coastal public lands and waters might be put, including recommendations as to which configurations of uses consonant with the policies of this Act maximize the benefits conferred upon the present and future citizens of Texas;

(3) Guidelines on the priority of uses in coastal public lands within the coastal area, including specifically those uses of lowest priority;

(4) A definition of the permissible uses of the coastal public lands and waters and definitions of the uses of adjacent areas which would have a significant adverse impact upon the management or use of coastal public lands or waters;

(5) Recommendations as to increments of jurisdiction or authority necessary to protect coastal public lands and waters from adverse consequences flowing from the uses of adjacent lands;

(6) An inventory of endangered environments and resources in the coastal public lands;

(7) Recommendations for any changes necessary in the organizational structure by which the program is implemented and administered.

(b) The board may review the management program periodically, and may amend the management program as new information or changed conditions may warrant.

(c) In developing the management program, the board shall, after due notice to littoral owners and the public generally, hold or cause to be held public hearings in such number and in such locations as the board may determine to be appropriate. In reviewing or amending the management program, the board may hold or cause to

be held public hearings in the manner provided in this subsection.

(d) The board shall, upon receipt of appropriate applications, register existing structures extending onto coastal public lands from adjacent lands not owned by the state; and may, insofar as consonant with the policies of this Act, regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which shall hereafter be built so as to extend onto coastal public lands from adjacent lands not owned by the state.

(e) The board may accept gifts of interests in lands, and interests so received shall become part of the permanent school fund unless otherwise designated by the grantor. Such lands may at the discretion of the board be managed as if they were coastal public lands within the meaning of this Act.

(f) The board shall have the authority to select and to purchase fee and lesser interests in lands of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities. Such interests may be purchased by the board with funds acquired by gift or grant, but not by condemnation. Interests so acquired shall not become a part of the permanent free school fund unless so designated by the board; but such interests may in the discretion of the board be managed as if they were coastal public lands within the meaning of this Act, regardless of whether they otherwise fall within the meaning of coastal public lands.

(g) The board may study various coastal engineering problems, such as the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements upon the physical and biological systems of the coastal public lands.

(h) The board shall have the authority to locate and cause to be marked upon the ground the boundaries separating coastal public lands from other lands.

(i) The board shall receive and evaluate any complaint or report from any person regarding instances of unauthorized construction, maintenance, use, or assertion of control of any structure upon coastal public lands, and shall refer all cases warranting judicial remedies to the attorney general, who shall immediately initiate judicial proceedings for the appropriate relief.

(j) The board is hereby designated and shall serve as the official representative of the governor of the state to conduct with

the federal government any business concerning any matter affecting the coastal public lands which arises out of the exercise by the federal government of any authority it may have over navigable waters under the Constitution of the United States.

(k) The board is hereby authorized to prescribe reasonable filing fees and fees for the granting of a lease, easement or permit, and to promulgate such procedural and substantive rules and regulations as it considers necessary to administer, implement, and enforce this Act.

<sup>1</sup> 16 U.S.C.A. § 1451 et seq.

#### Grant Applications, Registration, and Procedure

Sec. 7. (a) Any person desiring to acquire rights in the surface estate in any coastal public land shall make application in writing to the board in the form prescribed by the board. The application shall include the following:

(1) An adequate legal description of the land in which rights are sought;

(2) A statement of the rights sought;

(3) A statement of the purpose or purposes for which the land is to be used;

(4) A description of the nature and extent of the improvements, if any, which will be made on the land;

(5) An estimate of the time within which any improvements to be made will be completed; and

(6) Such additional information as the board may consider necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done.

(b) The board may grant the following interests in coastal public lands for the indicated purposes:

(1) Leases for public purposes;

(2) Easements for purposes connected with ownership of littoral property;

(3) Permits authorizing limited continued use of heretofore unauthorized structures on coastal public lands, not connected with ownership of littoral property;

(4) Channel easements to the holder of any surface or mineral interest in coastal public lands, for purposes necessary or appropriate to the use of such interests.

(c) Upon receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor. Not less than 30 nor more than 90 days after receiving such application, the board shall determine whether the proposed application should be granted, and if so, it shall determine the reasonable term, conditions, and consideration for such grant and may consummate the transaction.

## Leases for Public Purposes

Sec. 8. (a) The board may lease coastal public lands:

(1) To the Parks and Wildlife Department, or to any eligible city or county, for public recreational purposes;

(2) To the Parks and Wildlife Department, for management of estuarine preserves;

(3) To any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge;

(4) To any scientific or educational organization or institution for the purpose of conducting scientific research.

(b) Leases granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The littoral rights of the adjacent upland owner shall be protected;

(2) Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve;

(3) A county is eligible to apply for a lease for public recreational purposes of coastal public lands within the county and outside the boundary of any incorporated city, town, or village; and an incorporated city, town, or village is eligible to lease coastal public lands within its corporate boundaries for public recreational purposes;

(4) Any lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation, subject to the approval of the board; however, no such contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of such property.

## Easements to the Littoral Owner

Sec. 9. (a) The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public lands for purposes connected with the ownership of littoral property. The granting of an easement pursuant to this subsection, including the waiver in Paragraph (1) below, shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property. Every such grant shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The owner of littoral property may construct a pier which is not for commercial purposes, which does not exceed 100 feet in length nor 25 feet in width, and

which requires no filling or dredging, without obtaining an easement from the board; however, the location and dimensions of any pier must be registered with the board in the manner provided in this Act.

(2) In the administration of this subsection, the board shall take into account the public policy of this state that the orderly use of privately owned littoral property in a manner consistent with the public policy of this state shall not be impaired.

(b) In the event the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of government of this state, the board may agree with such agency or department to issue a single document incorporating all rights and privileges of the applicant.

## Permits

Sec. 10. (a) The board may issue permits authorizing limited continued use of heretofore unauthorized structures on coastal public lands, where such use is sought by one claiming an interest in any such structure but is not incident to the ownership of littoral property.

(b) Permits granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable in this Act:

(1) The board may not grant any permit authorizing the continued use of any structure located within 1,000 feet of:

(i) privately owned littoral property, without the written consent of the littoral owner;

(ii) any federal or state wildlife sanctuary or refuge;

(iii) any federal, state, county, or city park bordering on coastal public lands.

(2) A permit authorizing continued use of an heretofore unauthorized structure on coastal public lands shall be deemed automatically revoked and terminated if the coastal public land where the structure is located is subsequently leased for public purposes or exchanged for littoral property pursuant to this Act, or if such land is conveyed to a navigation district as provided by law.

(3) Every permit shall provide that in the event the terms of the permit are broken, the permit may, at the option of the board, be terminated.

(4) Such structures may be used only for noncommercial, recreational purposes.

(5) Permits may be issued for a period not to exceed five years and may be renewed at the discretion of the board.

(6) The board may not grant any application for a permit which would be in violation of the public policy of this state as

expressed in this Act, nor may it grant any permit for any structure not in existence on the effective date of this Act.

(7) In the event a structure for which a permit has been issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

(c) All structures for which a permit is required pursuant to this section, now existing or which shall be built, are declared to be the property of the state; and any construction, maintenance, or use of such structure, except as authorized in this section, is declared a nuisance per se and is expressly prohibited.

#### Registration

Sec. 11. Any person claiming as an incident of the ownership of littoral property any right in any structure which as of the effective date of this Act is situated in whole or in part upon coastal public lands shall register the location and dimensions of such structure with the board on or before December 31, 1973, in the manner provided by the board pursuant to this Act. Registration of such structure by the board shall not be construed as evidence of the acquiescence of the state in such claim by the owner; however, the failure of any such owner to register such a structure shall estop such owner from making any further claim of right against the state in such a structure and shall render such structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.

#### Remedies; Penalties

Sec. 12. (a) Any owner of littoral property who fails to register the location and dimensions of a pier authorized to be constructed under Paragraph (1), Subsection (a), Section 9 of this Act, shall be subject to a civil penalty of an amount not to exceed \$200.

(b) Any owner of littoral property or person acting under such owner, who shall, for purposes connected with the ownership of such littoral property, construct or fix or place upon coastal public lands any structure, without first having obtained an easement from the General Land Office, shall be subject to a civil penalty of an amount not to exceed \$200. Each day such structure remains on or affixed to coastal public lands constitutes a separate offense.

(c) Any person who shall maintain, use, or repair any structure for which a permit is required under Section 10 of this Act, without first having obtained a permit from the School Land Board, shall be subject to a civil penalty of not less than \$50 nor more than \$1,000.

(d) Any person who shall construct or fix or place upon coastal public lands any unauthorized structure for purposes not connected with ownership of littoral property shall be subject to a civil penalty of not less than \$50 nor more than \$1,000.

(e) The remedies provided in this section are cumulative of any and all others which may be applicable, including, where applicable, those remedies arising from the power of a court to enforce its jurisdiction and its judgments.

(f) In any proceeding arising out of any alleged violation of any provision of this Act or any rule or regulation promulgated by the board pursuant to this Act, and in any proceeding touching any interest in land sought or granted pursuant to this Act, and in any proceeding to determine the boundaries or title to any coastal public lands, venue shall lie in Travis County unless expressly waived in writing by the attorney general.

#### Rights of Littoral Owners

Sec. 13. Any littoral owner whose rights may be affected by any action of the board pursuant to this Act shall be permitted to bring suit for a declaratory judgment against the State of Texas in the District Court of Travis County, Texas, to try such issue or issues. Service of citation in such cases may be had by serving the commissioner of the General Land Office.

#### Funds

Sec. 14. (a) All moneys received by the board for grants under the provisions of this Act of surface interests whose initial term equals or exceeds 20 years shall be deposited in the state treasury to the credit of the permanent school fund.

(b) All moneys received by the board for the granting of permits under this Act shall be deposited in the state treasury to the credit of a special fund hereby created.

(c) All moneys received by the board for the granting of any interest not covered by Subsection (a) or (b) of this section shall be deposited to the state treasury to the credit of the available school fund.

#### Appeal

Sec. 15. Any interested party aggrieved by any action of the board pursuant to this Act may appeal such action by filing a petition in a district court of Travis County, Texas. The petition must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of such action, whichever is the later date. Service of citation on the board may be accomplished by serving the commissioner of the General Land Office. In an appeal of a board action, the issue is whether the action is invalid, arbitrary or unreasonable.

#### Exclusion

Sec. 16. Nothing in this Act shall prevent the littoral owner from developing or otherwise using his property in any lawful manner, nor shall this Act be construed to confer authority on the board to regulate, control, or restrict such use or development. No permit shall be required for structures, excavations, or other

similar structures so long as same are located wholly on the private littoral upland, even though such activities may result in the area being inundated by public waters.

#### Severability

Sec. 17. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

#### Repealer

Sec. 18. Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), is repealed. It is specifically provided that this Act does not repeal Chapters 2 and 3, Title 67, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> nor does this Act affect the power of the School Land Board or the commissioner of the General Land Office to grant interests in coastal public lands under any other law of this state. Provided, however, nothing herein shall be construed to alter, amend or revoke any existing right granted pursuant to any law.

[Acts 1973, 63rd Leg., p. 413, ch. 185, eff. Aug. 27, 1973.]

<sup>1</sup> Article 4026 et seq.

#### Art. 5415f. State-Owned Submerged Lands and Islands; Sale or Leasing of Surface Estate; Moratorium

Pending delivery of the final report of the Interagency Natural Resources Council to the Legislature covering its comprehensive study and recommendation concerning the state's submerged lands, beaches, islands, estuaries, and estuarine areas pursuant to S. C. R. No. 38 of this 61st Legislature, or until May 31, 1973, whichever date shall first occur, there is hereby declared a moratorium and suspension of the sale or leasing of, and of the establishment of any bulkhead line on, the surface estate of any state-owned submerged lands, beaches, and islands for any purpose under any existing law of this state.

Be it provided, however, that this moratorium shall not apply to any application for a lease of state-owned submerged lands or islands under the provisions of Chapter 377, Acts of the 57th Legislature, Regular Session, 1961, where the submerged lands or islands sought to be leased are within 2500 feet of submerged lands or islands already under lease to the applicant pursuant to the terms of Chapter 377, Acts of the 57th Legislature, Regular Session, 1961.

It is further provided that this Act shall not be construed to repeal, modify, or suspend the provisions of Chapter 3, Title 67, Revised Civil Statutes of Texas, as amended, as it relates to the powers and duties of the Parks and Wildlife Department with respect to all matters

pertaining to the sale, taking, carrying away, or disturbing of marl, sand, gravel, or shell of commercial value, and all gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation as provided in said Chapter 3.

Be it provided, however, that this Act shall not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility, so long as such condition shall exist.

[Acts 1969, 61st Leg., 2nd C.S., p. 141, ch. 21, § 1, eff. Sept. 19, 1969.]

Section 2 of Acts 1969, 61st Leg., 2nd C.S., p. 85, ch. 21, provided:

"The facts that the state-owned submerged lands, islands, estuaries, and estuarine areas in the Texas Gulf Coast Area, including the submerged lands of the state seaward of the mean of lower low water marks in the Gulf of Mexico, and the natural resources and the environmental natural beauty with which they are so richly endowed, constitute an important and valuable property right belonging to the Public Free School Fund and to all of the people of Texas, and they are of immediate and potential value to the present and future generations of Texans;

"That it is the declared policy of the state that such submerged lands, islands, estuaries, and estuarine areas shall be so managed and used as to insure the conservation, protection, and restoration of such submerged lands, islands, estuaries, and estuarine areas with resources and natural beauty and, consistent with such protection, conservation and restoration, their development and utilization in a manner that adequately and reasonably maintains a balance between the need for such protection in the interest of conserving the natural resources and natural beauty of the state and the need to develop these submerged lands, islands, estuaries, and estuarine areas to further the growth and development of the state;

"That the people of the State of Texas have a primary interest in the correction and prevention of irreparable damage to or unreasonable impairment of the uses of the coastal waters of the state and inland waters of the state in such estuaries and estuarine areas caused by drainage, waste water disposal, industrial waste disposal, and all other activities that may contribute to the contamination and pollution of such waters;

"That the people of the State of Texas also have primary interests in the value of such lands, islands, estuaries, and estuarine areas as public property for production and marketing of oil and gas and other minerals and mineral resources, for the production of living resources, for shell and other fisheries and fishing, hunting, and other recreation, for wildlife conservation, and for health and other uses in which the public at large may participate and enjoy;

"That it is also the declared policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico and hence the people of the State of Texas have a further primary interest in conserving the natural beauty of the state's beaches and protecting and conserving them for the use of the public;

"That the Interagency Natural Resources Council has been directed by the Legislature to make a comprehensive study to prepare the way for constructive legislation for the present and future protection of the interest of the people of the State of Texas in such submerged lands, beaches, islands, estuaries, and estuarine areas; and

"That the purpose, intent, and effectiveness of such constructive legislation for the present and future protection of the people of the State of Texas cannot be achieved if the sale and leasing of the state-owned submerged lands, beaches, and islands is continued under the existing laws of this state without regard to detailed modern scientific knowledge of these submerged lands, beaches, and islands which will result from the Council study and before such information can be collected and finally reported to the Legislature.

"All create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended; and that this Act shall take effect and be in force from and after its passage, and it is so enacted."

#### Art. 5415g. Gulf Coast and Public Beach Areas; Excavation of Sand, etc.; Permits

##### Policy and Purpose

Sec. 1. The Legislature finds that the unregulated excavation, taking, removing, or



carrying away of sand, marl, gravel and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of this state constitute a substantial interference with public enjoyment of Texas beaches, a hazard to life and property.

#### Application for Permit

Sec. 2. Any person or association of persons, corporate or otherwise, desiring to excavate, take, remove, or carry away sand, marl, gravel, or shell from any land located on any exposed island or peninsula bordering on the Gulf of Mexico, or from land located within 1500 feet of any mainland public beach, where such land is situated outside the boundaries of any incorporated city, town or village, shall first make written application therefor to the commissioners court of the county in which such excavation, taking, removing, or carrying away shall take place.

#### Contents of Application; Filing Fee Certification

Sec. 3. Such application shall set forth the name of the applicant; the location and dimensions of the proposed excavation; the property interest or contractual right which enables applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and shall include certification by the county treasurer, or if there be no county treasurer, other official exercising similar authority, that applicant has deposited a filing fee of \$50.

#### Permits; Issuance

Sec. 4. Upon a finding that the proposed excavation, taking, removing or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm waters, the commissioners court may issue a permit to such applicant and it shall be valid for six months from the date of issuance thereof. The decision of the commissioners court shall be made with the advice and counsel of the county engineer, in those counties where such official is employed by the commissioners court.

#### Refusal of Permit; Recovery of Filing Fee

Sec. 5. If the commissioners court shall refuse the permit, applicant may recover his filing fee from the county treasurer, or if there be no county treasurer, other official exercising similar authority.

#### Ownership of Land or Consent of Owner; Necessity for Permit

Sec. 6. No permit shall be issued by the commissioners court pursuant to the provisions of this Act to excavate, take, remove, or carry away any sand, marl, gravel, or shell from any land owned by the State of Texas, nor from any public beach in the State of Texas; nor shall any permit be issued by the commissioners court to excavate, take, remove, or carry away any sand, marl, gravel, or shell from any privately-owned land subject to the provisions of this Act which is not located on a public

beach, unless applicant is the owner of the land where the proposed excavation, taking, removing, or carrying shall take place, or unless applicant is acting with the knowledge and consent of such owner.

#### Exemptions

Sec. 7. The provisions of this Act shall not apply:

(1) to any taking, removing, carrying away, or excavation of sand, marl, gravel, or shell made for the purpose of constructing improvements upon real property, where such improvements are constructed upon the property where said taking, removing, carrying away, or excavation occurs.

(2) to any landowner desiring to shift sand, marl, gravel, or shell from one location to another on land wholly owned by such landowner.

(3) to any agency of the federal or state government, nor to any agent nor officer thereof acting in his official capacity; nor shall the provisions of this Act apply to any agency of any county, city, or other political subdivision, nor to any agent nor officer thereof acting in his official capacity.

Be it provided, however, that for the purposes of this Act, any person or association of persons, corporate or otherwise, holding a lease from the State of Texas under the provisions of Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Revised Civil Statutes of Texas), shall be treated as an owner of such land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes set forth in this Section without first obtaining a permit from the commissioners court.

#### Saving Clause

Sec. 8. Nothing in this Act shall be construed to repeal or modify the provisions of Chapter 3, Title 67, Revised Civil Statutes of Texas, as amended,<sup>1</sup> as it relates to the powers and duties of the Parks and Wildlife Department with respect to all matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value, and all gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation as provided in said Chapter 3; nor shall anything in this Act be construed to create any additional or supplemental requirements or procedures to those set forth in the said Chapter 3, Title 67, insofar as the matters therein involved are concerned.

<sup>1</sup> Article 4051 et seq.

#### Assignability and Revocation of Permits

Sec. 9. No permit shall be assignable without the approval of the commissioners court, and a failure or refusal of the holder to comply with the terms and the conditions of such permit shall operate as an immediate termination

and revocation of all rights conferred therein or claimed thereunder.

**Public Notices and Hearing on Applications**

Sec. 10. The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell. Such notice shall be published once in a newspaper of general circulation in the county, and shall include the name of the applicant and the location and dimensions of the proposed activity. A public hearing shall be held by the commissioners court in any case in which such is requested by any citizen within ten days after such publication. Notice of such public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county, and such hearing may not be held less than thirty days from the date of the first such publication.

**Definition of "Public Beach"**

Sec. 11. For the purposes of this Act, "public beach" shall mean any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, to which the public has acquired the right of use or easement to or over such area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

**Construction of Recreational Facility or Shoreline Protection Structure**

Sec. 11A. No incorporated city, town, or village having within its boundaries a public beach may authorize any person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from such public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

**Applicability of Act**

Sec. 12. This Act shall not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility, so long as such condition shall exist.

**Injunctive Remedies; Enforcement**

Sec. 13. The Attorney General, any County Attorney, District Attorney, or Criminal District Attorney of the State of Texas is hereby authorized and empowered, and it shall be his, or their duty to file in the District Court of the county where such conduct is taking place, actions seeking either temporary or permanent court orders or injunctions to prohibit any excavation, taking, removing, or carrying away any sand, marl, gravel, or shell from any land located on any exposed island or peninsula bordering on the Gulf of Mexico, or from land located within 1500 feet of any public beach of this state, where such land is situated outside the boundaries of any incorporated city, town,

or village, in violation of the provisions of this Act.

**Offense; Penalty**

Sec. 14. Whoever shall, for himself, or for or on behalf of or under the direction of another person, or association of persons, corporate or otherwise, excavate, take, remove, or carry away any sand, marl, gravel, or shell from any land located on any exposed island or peninsula bordering on the Gulf of Mexico, or from land located within 1500 feet of any public beach of this state, where such land is situated outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this Act, shall be fined not less than \$10 nor more than \$200. Each day's operation shall constitute a separate offense.

[Acts 1969, 61st Leg., 2nd C.S., p. 133, ch. 19, eff. Dec. 9, 1969; Acts 1973, 63rd Leg., p. 552, ch. 236, §§ 1 to 3, eff. June 11, 1973.]

**Art. 5415h. Barrier Islands and Peninsulas Bordering Gulf; Protection of Sand Dunes**

**Findings of Fact**

Sec. 1. The legislature finds and declares:

(1) That the barrier islands and peninsulas of this state and the adjacent mainland areas contain a significant portion of the state's human, natural, and recreational resources;

(2) That these areas are wholly or in part protected from the action of the waters of the Gulf of Mexico and storms thereon by a system of natural or artificially constructed vegetated sand dunes which provide a protective barrier for adjacent lands and inland waters and land against the action of sand, wind, and water;

(3) That certain persons, firms, and corporations have from time to time modified or destroyed the effectiveness of such protective barriers in the process of developing the shoreline for various purposes;

(4) That the operation of recreational vehicles over these dunes has destroyed the natural vegetation thereon;

(5) That these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property, and they constitute a real danger to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) That it is necessary to protect these dunes as hereafter provided because stabilized, vegetated dunes offer the best natural defense against storms;

(7) That vegetated, stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline.

(8) That the area bounded on the north by the Mansfield Ship Channel and extending to the southern tip of South Padre

Island is an area of irregular dunes, the vast majority of which are unvegetated, unstable, and migratory; and that such dunes do not afford significant protection to persons and property inland from this area.

(9) That the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel is an area of a mixture of irregular dunes as described in Paragraph 8 above, and dunes which afford protection to persons and property inland.

#### Definitions

Sec. 2. When used in this Act, unless the context requires a different definition

(1) "Barrier island" refers to an island bordering on the Gulf of Mexico and entirely surrounded by water;

(2) "Peninsula" refers to an arm of land bordering on the Gulf of Mexico surrounded on three sides by water;

(3) "Recreational vehicle" refers to any dune buggy, marsh buggy, mini-bike, trail bike, jeep, or any other mechanized vehicle which is being used for recreational purposes, but shall not refer to any such vehicle which is not being used for recreational purposes.

#### Dune Protection Line

Sec. 3. (a) The commissioners court of any county bordering on the Gulf of Mexico having within its boundaries any barrier island or peninsula situated north of the Mansfield Ship Channel may after due notice and public hearing establish a dune protection line on any such island or peninsula for the purpose of preserving sand dunes which offer a defense against storm waters and erosion of the shoreline.

(b) Notice of such hearing shall be published at least three times in the newspaper with the largest circulation in the county not more than three weeks nor less than one week prior to the date of the hearing. Notice shall also be given to the Commissioner of the General Land Office not more than three weeks nor less than one week prior to the hearing.

(c) The commissioners court in establishing a dune protection line shall define the line by showing it on a map or drawing or by making a written description, or both, which shall be designated appropriately and filed with the county clerk and with the Commissioner of the General Land Office. Notice of alterations in the dune protection line shall be filed with the county clerk and with the Commissioner of the General Land Office, and the appropriate changes shall be made on the map, drawing, or description.

(d) The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

(e) Provided, however, that the provisions of this Act shall not apply to any island or peninsula not accessible by public road or common carrier ferry facility for so long as said condition shall exist.

#### Prohibited Conduct

Sec. 4. (a) In any county in the area bounded on the south by the inlet known as Aransas Pass and on the north by the Texas-Louisiana state line, where a dune protection line has been established, it shall be unlawful for any person or association of persons, corporate or otherwise, to damage, destroy, or remove any sand dune or portion thereof on any barrier island or peninsula seaward of the dune protection line, or to kill, destroy, or remove in any manner any vegetation growing on any sand dune seaward of the dune protection line, without first having obtained a permit as specified which authorizes such conduct.

(b) In any county in the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel, where a dune protection line has been established, it shall be unlawful for any person or association of persons, corporate or otherwise, to:

(1) excavate, remove, or relocate any sand dune or any portion thereof located seaward of such dune protection line so as to reduce the sand dune to an elevation less than the elevation, or elevations, shown on the Special Flood Hazard Map of such area promulgated by the administrator of the Federal Insurance Administration under and in accordance with the terms of the National Flood Insurance Act;<sup>1</sup>

(2) kill, destroy, or remove in any manner any vegetation growing on any sand dune seaward of the dune protection line, without making provision for the stabilization of such dune by the installation or construction of improvements or the replanting or resodding of vegetation thereon so as to maintain the dune at the minimum elevation set forth in Paragraph (1) above, without first having obtained a permit as specified hereafter which authorizes such conduct.

(c) In any county where a dune protection line has been established, it shall be unlawful for any person to operate a recreational vehicle on any sand dune seaward of the dune protection line.

<sup>1</sup> 42 U.S.C.A. § 4001 et seq.

#### Permits

Sec. 5. (a) Any owner of land or person holding any interest under the owner desiring to commit any acts on such land prohibited in Section 4 of this Act must first make application for a permit from the commissioners court.

(b) The commissioners court shall evaluate the permit application and may grant the ap-

plication if it finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, taking into consideration the height, width, and slope of the dune and the restoration of protection so affected by construction as well as the restoration of vegetation.

(c) The commissioners court may require a reasonable fee to accompany the application, and may include in any permit such terms and conditions as it finds necessary to assure the protection of life and property.

#### Exemptions: Prohibitions

Sec. 6. (a) No permit may ever be issued by the commissioners court which would allow the operation of a recreational vehicle on any sand dune seaward of the dune protection line.

(b) No permit is required for any of the following activities:

- (1) the grazing of livestock;
- (2) the production of oil and gas;
- (3) recreational activity other than the operation of a recreational vehicle.

(c) No dune protection line may ever be established for the purpose of protecting dunes located within any state or national park area.

#### Critical Dune Areas

Sec. 7. (a) The Commissioner of the General Land Office, in his role as trustee of the public lands of this state, shall identify the critical dune areas which are essential to the protection of state-owned lands, shores, and submerged lands. After these critical dune areas are identified, the commissioners court of any county having within it one or more critical dune areas shall be notified of the existence and location of such area or areas.

(b) After receiving an application for a permit to carry out any of the activities prohibited in Section 4 of this Act within a critical dune area identified pursuant to this section, the commissioners court shall notify the Commissioner of the General Land Office by sending a copy of the application and notice of the public hearing not less than ten days prior to the public hearing on the application. The commissioner may submit any comments, either in writing or orally at the hearing, regarding the effect of the proposed activity on dunes which protect state-owned lands, shores, and submerged lands.

#### Appeal

Sec. 8. Any littoral owner aggrieved by any decision of the commissioners court under the provisions of this Act may appeal to the district court of that county. It is specifically provided that the Commissioner of the General Land Office, in his role as trustee of the public lands of this state, may appeal to the district court of that county any decision of the commissioners court which the land commissioner determines to be in violation of this Act.

#### Penalty

Sec. 9. Any person or association of persons, corporate or otherwise, who shall violate the provisions of this Act shall be fined not more than \$200. Each day that a violation occurs constitutes a separate offense.

[Acts 1973, 63rd Leg., p. 548, ch 235, eff. Aug. 27, 1973.]

#### Arts. 5416, 5416a. Repealed by Acts 1969, 61st Leg. p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing these Articles, enacts Titles 1 and 2 of the Texas Education Code.

#### Art. 5417. University Fund

After the payment of the amounts due from the State to the common free school fund out of the proceeds of the sales of that portion of the public lands set aside for the payment of the public debt by an Act approved July 14, 1879, and an Act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and University funds by an Act approved February 23, 1883, the remainder of said land not to exceed two million acres, or the proceeds thereof, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths.

[Acts 1925, S.B. 84.]

#### Art. 5418. Asylum Fund

The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An Act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums.

[Acts 1925, S.B. 84.]

#### Art. 5419. Unlawful Inclosures

If the Governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this title, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosure and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. In suits provided for in this article the court shall issue a writ of sequestration directed to any sheriff of the State, commanding and

requiring such officer to take into his actual custody such land and all property thereon belonging to the persons so unlawfully occupying said lands, and hold the same subject to further orders of the court. Such writ of sequestration may be executed by any sheriff into whose hands it may be delivered, and he shall proceed to execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases and all appeals therefrom shall have precedence over all other cases; and, if judgment is recovered by the State in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant.

[Acts 1925, S.B. 84.]

#### Art. 5420. Adverse Claimant; Suit

When any public lands are held, occupied, or claimed by any person, association or corporation, adversely to the State, or to any fund or when lands are forfeited to the State for any cause, the Attorney General shall institute suit therefor, for rent thereon, and for any damages thereto. Any and all suits brought by the State under this Article and under the preceding Article must be brought in the county in which the land or any part thereof may lie. Nothing in this Act shall affect or apply to any suit or suits pending at the time this Act shall become effective.

[Acts 1925, S.B. 84; Acts 1939, 46th Leg., p. 464, § 1.]

#### Art. 5421. Suits for Minerals and Timber

The Commissioner and the county attorneys of the State shall report to the Attorney General semi-annually, or oftener if they desire, the name and residence of each person, firm, association of persons or corporation who has cut, used, destroyed, sold or otherwise appropriated any timber from any public lands or taken any minerals or other property of value therefrom, and such other data within their knowledge, and the county attorneys shall assist the Attorney General in whatever way he requests in relation thereto. The Attorney General shall bring suit for the value of such property in any county where the injury or a part thereof occurs, or in the county where the defendant resides, or he may, with the consent of the Governor, compromise and settle with or without suit any of the aforesaid liabilities. The Attorney General shall pay all sums so collected or received to the permanent funds to which they belong. Of all amounts recovered by suit, the Attorney General shall receive a fee of ten per cent, and the county attorney five per cent, and on amounts recovered by compromise, each shall receive one-half of such fees to be taxed against the defendant as costs. No county attorney shall receive compensation

from cases not reported by him to the Attorney General.

[Acts 1925, S.B. 84.]

#### Art. 5421a. Lands Involved in Oklahoma Boundary Suit

Sec. 1. If the State of Texas should be awarded any area of land along the 100th degree of west longitude on the east side of the panhandle of Texas and the west side of the State of Oklahoma by the final decree of the Supreme Court of the United States at Washington, D. C., in the case of the State of Oklahoma against the State of Texas, the United States intervenor, such area shall thereby and at once become a portion, part and parcel of and incorporated into the several counties of the State of Texas adjacent thereto, the same as if such area had been originally included therein for all governmental purposes when they were created, and the north and south lines of said adjacent counties, namely, Lipscomb, Hemphill, Wheeler, Collingsworth and Childress are hereby extended east to the said 100th degree of west longitude as it may be fixed by and in the final judgment and decree of said court; and said land shall be assessed for taxes and the taxes collected thereon by the proper officers of each of said respective counties under the provisions of existing laws.

Sec. 2. Such area of land, if any, as may be awarded to the State of Texas, as set out in the preceding section, shall not be subject to sale or other disposition until such time as the Legislature may hereafter provide.

Sec. 3. The Commissioner of the General Land Office shall immediately proceed to ascertain the number of acres of said land, its probable value per acre in each of said counties as the lines thereof have been extended by this Act, the nature and value of the improvements thereon, the nature of the occupancy and length of time of same by those who are occupying any of said land under any claim of title, the nature and character of such claim and title thereto, if any, and all such other information as to him may be deemed of service to the Legislature. All such information so acquired shall be immediately transmitted to the Legislature, if then in session, and if not in session, to the Governor of the State.

Sec. 3a. This Act shall be in force and go into effect immediately upon the approval by the Supreme Court of the United States of the report of the Commissioner appointed by said Court to locate and mark upon the ground the 100th degree of West longitude and the line for which provision is herein made to which the lines of the several counties herein mentioned shall be extended, shall be the line fixed by the Supreme Court of the United States in its approval of the report of said Commissioner.

[Acts 1929, 41st Leg., p. 335, ch. 155.]

<sup>1</sup> So in enrolled bill. Should probably read "in."

**Art. 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake**

Sec. 1. All public land lying beneath or adjacent to the waters of Caddo Lake in Marion, Harrison and adjoining counties, and all such public lands heretofore sold by the State that may hereafter revert to the State and become a part of the public domain, be and the same is hereby withdrawn from the market and the title thereto shall remain in the State of Texas to be enjoyed by the public for fishing and hunting and for State park purposes as may hereafter be provided by Law; and the Land Commissioners<sup>1</sup> is hereby directed to offer no portion of said land for sale nor to receive any bids therefor.

Sec. 2. The Commissioner of the General Land Office may lease any or all of said land for mineral purposes, as now provided by Law, but before the same shall be leased it shall be advertised in some newspaper published at Marshall or Jefferson Texas, stating what land is to be leased and the prices offered therefor; and such advertisement shall invite other and additional bids thereon, and the lease shall only be made to the highest bidder.

[Acts 1929, 41st Leg., p. 430, ch. 198.]

<sup>1</sup> So in Session Laws.

**Art. 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries**

Sec. 1. All or any part of the Public Lands belonging to the State situated in and under the bed of Caddo Lake and the tributaries thereto and all or any part of such lands adjacent thereto shall be subject to lease for mineral development by the Commissioner of the General Land Office to any person, firm or corporation in accordance with the provisions of existing or future laws pertaining to the leasing and development of all islands, salt-water lakes, bays, inlets, marshes and reefs, owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, in so far as same are not in conflict herewith.

Sec. 2. The development and operation upon the lands included herein shall be conducted so far as practicable in such manner as to prevent such pollution of the water as will destroy fish or wildlife. The Commissioner of the General Land Office, with the advice and assistance of the Game and Fish Commission, shall prescribe and enforce such rules and regulations as may be necessary for that purpose.

[Acts 1955, 54th Leg., p. 844, ch. 311.]

**Art. 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created**

**Lands Subject to Control and Sale**

Sec. 1. All lands heretofore set apart to the public free school funds under the Constitution and laws of Texas, and all of the unappropriat-

ed and unsold public domain remaining in this State of whatever character, except river beds, and channels, and islands, lakes and bays, and other areas within tide water limits, are subject to control and sale under the provisions of this Act.

**Surveyed Public Free School Land**

Sec. 2. Surveyed public free school land may be sold by the Commissioner on the first day of any month to the person offering the highest price for it after the same has been advertised for sale in accordance with this Act and the provisions of subdivision 2 of Chapter 3, Title 86, Revised Civil Statutes, 1925,<sup>1</sup> relating to school land, provided that all such land within five miles of a well producing oil or gas in commercial quantities shall be subject to lease only, and the surface rights shall not be sold.

<sup>1</sup> Article 5309 et seq.

**Surveyed Land Defined**

Sec. 3. Surveyed land within the terms of this Act is defined to be all tracts or parts of tracts heretofore surveyed either on the ground or by protraction, and set apart for the public school funds and which is unsold, and for which field notes are on file in the General Land Office or which may be delineated on the maps of said Office as such, and unsurveyed land is defined to be all areas not included in surveys on file in the General Land Office or surveys delineated on the maps thereof.

**Conditions as to Sale**

Sec. 4. All land shall be sold without condition of settlement and with a reservation of one-sixteenth ( $\frac{1}{16}$ ) of all minerals, as a free royalty to the State, which two conditions shall be expressed in the application to purchase and in the notice of award, the minimum price to be fixed by the Commissioner and in no case to be less than One Dollar (\$1.00) an acre. Provided, that one-eighth ( $\frac{1}{8}$ ) of all sulphur and other mineral substances from which sulphur may be derived or produced shall be reserved as a free royalty to the State.

**Prior Surveys, Sold, Patents For**

Sec. 5. Any headright survey, homestead donation, pre-emption survey, scrip survey or other survey heretofore awarded or sold, which survey has been held and claimed in good faith by any party for a period of ten years prior to the date of application for patent and which surveys cannot be patented under existing laws, may be patented on payment of One Dollar (\$1.00) an acre to the Land Commissioner. In such cases the patent shall be issued to the owner now of record in the General Land Office and inure distributively to the true and lawful owners of the land, provided that in all cases where a tract of school land has been occupied by mistake as a part of another tract, such occupant shall have a preference right for a period of six months after the discovery of the mistake, or after the passage of this Act, to purchase the land at the same price paid or

contracted to be paid for the land actually conveyed to him.

Definitions; Vacant and Unsurveyed Land  
Subject to Sale or Lease; Royalties;  
Applications and Procedure Thereon

Sec. 6. (a) Wherever the reference is made in this Act to "Commissioner," the same shall mean the Commissioner of the General Land Office.

Wherever the term "Good Faith Claimant" or "Claimant" is used in this Act, the same shall mean any person, firm, or corporation, occupying or using, or theretofore occupying or using, or whose predecessors in interest, have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals therefrom with a good faith belief that the same was included within the boundaries of a survey or surveys previously titled, awarded or sold under circumstances that would, at the time the vacancy issue arose, have vested title thereto had said area actually been located within said survey or surveys, and whose said boundaries are shown to have been recognized boundaries in the community. Provided a person, firm, or corporation, or those under whom he claims, shall have said land in his inclosure or under definite recognized boundaries and be in possession thereof for a period of ten (10) years with a good faith belief that he was the owner thereof and that same was included within his survey, except that whenever the owner of the tract of land adjoining the alleged vacant area makes application to buy the same, and no prior application to purchase or lease such alleged vacant area is on file, then such owner of said adjoining tract of land, who otherwise qualifies as a good faith claimant, shall be considered a good faith claimant without regard to the length of time he may have owned said adjoining land, or had such alleged vacant tract inclosed, or under definite recognized boundaries and in possession with the belief that the vacant area was included within his survey.

"Vacancy," when used in this Act, means an area of unsurveyed school land not in conflict on the ground with lands previously titled, awarded, or sold, which has not been listed on the records of the Land Office as school lands and which on the date of the filing was neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the State to recover the same.

"Applicant," when used in this Act, means any person, other than a good faith claimant, who discovers and files application to purchase or lease a vacancy.

(b) The vacant and unsurveyed land included within this Act shall be subject to sale or lease under the terms of this Act. Any of such land shall be subject to sale to a good faith claimant whether the same shall be within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, or not; but

such lands lying within five (5) miles of a well producing oil or gas in commercial quantities shall not be subject to sale to any other person than a good faith claimant, but where there is no good faith claimant, or such claimant fails to exercise his preferential right, lands within such five-mile distance shall be subject to lease only, and all of such leases shall reserve to the State at least a one-eighth free royalty on oil, gas, sulphur, and other minerals. In all cases where the good faith claimant purchases the land within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, there shall be reserved to the State a free royalty of one-eighth of all oil, gas, sulphur, and other minerals. On all other vacancies sold there shall be a free royalty of one-sixteenth reserved to the State on all oil and gas production and one-eighth on sulphur and other minerals. Such royalty reserved by the State shall be one-eighth on oil and gas and one-sixth on sulphur and other minerals if a good faith claimant fails to exercise his preference right to purchase within ninety (90) days after the Commissioner determines the existence of the vacancy as hereinafter provided. Such sales shall provide that the purchaser shall have the right to execute oil, gas, and mineral leases on the land without the joinder or approval of the Commissioner, and all bonus money and rentals therefor shall be paid to and be the property of the purchaser, but any and all of such mineral leases shall provide for and reserve to the State the above-mentioned free royalty on all oil, gas, sulphur, and other minerals. On all vacancies leased by the State, there shall be reserved not less than a one-eighth free royalty on oil, gas, sulphur, and other minerals.

(c) Any applicant who claims that a vacancy exists and desires to lease or purchase same shall file in duplicate with the County Surveyor of the county in which any part of the land is situated a written application to purchase or lease, describing the land claimed to be a vacancy, and stating that he desires to purchase or lease same under the provisions of this Act. The application shall also state the names and addresses of all owners or claimants of land or any interest therein and of leases of any character thereon, adjoining, overlapping, or including the land claimed to be vacant, so far as the same may be ascertained from the records of the General Land Office, and of the office of the County Clerk of the county in which the land is located and from the tax rolls of such county. The application shall also state the names and addresses of all persons who, from facts known to the applicant, assert any right to said alleged vacant land, and same shall be sworn to and shall state the applicant knows of no other claimants than those listed.

Contemporaneously with the filing of the application, the applicant shall pay to said surveyor a filing fee of Five Dollars (\$5). The surveyor shall mark on the original and duplicate the exact hour and date of filing, shall re-

turn one application to the applicant and shall record the other in a book to be kept by him for that purpose. The application which is returned to the applicant shall, within ten (10) days after the date of filing with the surveyor of the county, be filed with the Commissioner who shall note thereon the date of filing. Applicant shall also pay a filing fee of One Hundred Dollars (\$100) to the Commissioner. Failure to file the application with the Commissioner within the time fixed, and to pay the filing fee, shall be a waiver of all rights under the application. As between applicants, priority shall date from the time of filing with the surveyor. In counties which have no County Surveyor, such preliminary filing shall be with the County Clerk and shall be recorded in a book to be kept for that purpose, but not in the deed records.

The Commissioner shall notify the applicant by letter of the estimate of the cost of proceedings under the application, and, within thirty (30) days after the date of such letter, the applicant shall make a deposit with the Commissioner to cover costs of all work which may be necessary in order to comply with the request contained in such application. Upon failure to make the deposit as required, all rights under the application shall be lost. In the event such deposit shall prove to be insufficient, the applicant shall be requested by letter to make a further deposit of a sum to be fixed by the Commissioner and, if such additional deposit be not made within thirty (30) days after the date of such letter, the work shall be discontinued and the application cancelled, and such cancellation shall be so endorsed on the application. Upon cancellation, the right to purchase or lease under such application shall be lost. The deposits provided for in this Section shall be a special trust fund to be used only for the purpose authorized by this Act. Provided that the applicant shall have the right of appeal from the estimate of cost so made by the Commissioner, to the District Court of Travis County by giving notice to the Commissioner in writing thereof within fifteen (15) days after the receipt of said estimate from said Commissioner as herein provided. And provided that said applicant shall have fifteen (15) days after the decision of said District Court as to amount in which to make payment thereof.

Upon filing of any such application with the Commissioner and upon the making of the required deposit as provided for herein, the Commissioner shall forthwith cause a notice of intention to survey to be mailed to all persons named in the application as interested persons, and at the addresses given therein, and to the Attorney General of Texas. The notices shall be deposited in the Post Office at Austin, Texas, at least ten (10) days prior to the date fixed for the beginning of such survey.

The Commissioner shall appoint a surveyor to make a survey in accordance with the notice. Such surveyor shall be a surveyor licensed by the State, or the County Surveyor of

the County in which the land or a part thereof is situated. The fees and expenses to be paid for such work shall be such as may be fixed by law, or, if not so fixed, then such as the Commissioner and the surveyor may agree upon, but not in excess of such as may be reasonable for the work performed, all of which shall be paid by applicant.

A written report of the survey with field notes describing the land and the lines and corners so surveyed together with a plat showing the results of such survey shall be filed in the General Land Office within one hundred and twenty (120) days from the filing of the application, unless the time be extended by the Commissioner for good cause shown, which shall be stated in writing and filed as a part of the record of the proceedings, but such extension shall not exceed sixty (60) days. The report shall state the names and the Post-Office addresses of all persons in possession of the land described in the application, and of all persons found by the surveyor to have or claim any interest therein. Any interested party may at his own expense cause any surveying to be done as he deems desirable.

As soon as the total expense properly charged against the deposit has been determined, the Commissioner shall render a complete statement to applicant, accompanied by payment of the balance, if any, shown to be remaining in such fund.

Within sixty (60) days after the surveyor has made his report as provided herein, a hearing may be held before the Commissioner on the date fixed in a notice which he shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the Attorney General, to determine whether there is a vacancy. Such notice shall be deposited in the Post Office at Austin, at least ten (10) days prior to the date fixed for such hearing. At the hearing, the State and each interested party, whether or not he received notice, shall have a right to be heard.

(d) If the Commissioner should decide that the area so alleged to be a vacancy is not vacant, then the Commissioner shall so endorse said application and file it with his finding, and shall promptly notify the applicant of his finding by registered mail, and shall file all reports and papers received in connection with said application, and then shall take no further steps with respect to same unless the existence of the alleged vacant area shall have been determined by a Court of competent jurisdiction. Thereupon, the applicant's application and all preference rights acquired thereby, to buy, or lease, such alleged vacancy shall become null and void, unless within a period of ninety (90) days after the mailing of such notice the applicant shall file suit in the District Court of the county wherein any part of such land is located, for the purpose of litigating the question of the existence of a vacant unsurveyed area.



(e) If it shall appear to the Commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the State, the Commissioner shall give prompt notice of such finding to the applicant and to all those who have been previously identified as interested parties, and thereafter, subject to the further provisions hereof, such applicant shall have a right for one hundred and twenty (120) days to purchase or lease such portion of said land as is vacant at the price fixed by the School Land Board as hereinafter provided, with the royalty reservation provided hereinabove in subsection (b); provided that no such award shall be made by the Commissioner except after a hearing, and provided further that no presumption shall obtain in any suit involving the existence of a vacancy, as a result of the action of the Commissioner in this respect.

(f) Any good faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist, or who has been notified by the Commissioner that a vacancy has been found to exist upon lands claimed by him shall, at any time, until ninety (90) days after a decision of the Commissioner declaring the existence of a vacancy, have a preference right to purchase or lease same by applying in writing to the Commissioner for such purchase or lease, and by furnishing such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant shall then be entitled to purchase or lease such portion of said land as is vacant, at the price fixed by the School Land Board, subject to the royalty reservations herein provided, effective as of the date such application is filed.

Where there is no valid and subsisting prior filing by an applicant covering the alleged vacant area upon the date of the filing of a good faith claimant's application to purchase or lease, such application shall be accompanied by a filing fee of One Dollar (\$1), by a written report of a surveyor licensed by the State, or the County Surveyor of the county in which the land or a part thereof is situated, with field notes describing the land and the lines and corners so surveyed, together with a plat showing the results of such survey, and by such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant may, however, if he so desires, file his application to purchase or lease, and within one hundred and twenty (120) days from the date of filing with the Commissioner, cause a survey of the alleged vacancy to be made, and file the written report, field notes, and plat in the General Land Office, together with the proof that he is a good faith claimant. If it shall appear to the Commissioner that the alleged vacancy is not in conflict with the land previously titled, awarded or sold by the State, the Commissioner shall grant such application under the provisions of this Act; provided, however, that prior to granting the application, the Commis-

sioner may have a hearing at which any interested persons may appear.

The application by a good faith claimant shall not be used or considered, in any way, as an admission on his part that a vacancy exists.

Any good faith claimant shall also have a preference right until ninety (90) days after final judicial determination of the existence of a vacancy to purchase the land alleged or adjudicated to be vacant; provided, however, that if such good faith claimant shall not have exercised his preference right until after ninety (90) days after the decision of the Commissioner determining the existence of the vacancy, then the sale made to the good faith claimant shall be subject to a reservation in favor of the State of a free one-eighth ( $\frac{1}{8}$ ) royalty of all oil, gas, sulphur and other minerals, and subject to any lease made or to be made by the State to applicant, if any, of not more than thirteen-sixteenths ( $\frac{13}{16}$ ) mineral interest as in this Act provided. If the Commissioner has theretofore executed a mineral lease on a larger portion of the minerals under said land, then such lease shall be amended to cover only thirteen-sixteenths ( $\frac{13}{16}$ ) of the minerals so as to conform with the preference rights hereby given to good faith claimants.

Any good faith claimant of a vacant or un-surveyed tract of land shall have ninety (90) days after the sale or lease by the Commissioner of said tract to institute suit to set aside the sale or lease of said tract of land. If said suit be not instituted by the good faith claimant within said ninety-day period, he shall lose all preference rights to buy or lease said land.

If the Commissioner has failed to determine whether or not there is a good faith claimant, or if his decision is questioned by applicant or one asserting to be a good faith claimant, then such issue shall be determined in any suit brought under this Act to determine the existence of the alleged vacancy.

Provided the good faith claimant shall pay back to the applicant the amount of expenses incurred in determining the existence of the vacancy, as provided for in Section 1, Subsection (c), except the filing fees, within ninety (90) days after the Commissioner has declared the vacancy to exist, or he shall lose all preference rights to lease or buy said land.

(g) The purchase by any good faith claimant under such preferential right shall inure distributively to the benefit of all owners holding title under him or an interest in the title under which he claims to be a good faith claimant, provided that such co-owners or lessees shall accept the provisions hereinafter set out and contribute their proportionate part of the royalty reserved to the State and the royalty awarded to the applicant. Such reservation shall be deducted distributively and proportionately from the mineral interest of each owner, including mineral leases, if the area should be under mineral lease. As a condition to the

benefits conferred by this law, it is expressly provided that such claimants receiving patents or awards, or for whose benefit such patents or awards are received, shall recognize the proportionate interests of other owners benefiting by the award of preference rights hereby. The consideration for such purchase shall be determined by the Commissioner without considering the potential mineral value or any improvements thereon, but shall not be less than One Dollar (\$1) per acre, and the State shall retain its right to recover from the party or parties liable therefor the market value, when produced, of all oil, gas, sulphur, and other minerals that may have been produced from such area prior to the effective date of the said patent or award, but against such liability there shall be allowed as an offset to the operator the actual cost of developing and producing the same. Provided that no mineral lease executed by the good faith claimant previous to the filing of the vacancy claim shall give the lessee any interest in, or to, any vacancy.

No title to either land or mineral interest in land acquired from the State under preference right shall ever be held to pass as an after-acquired title by reason of any covenant of general warranty, description, or other provision, contained in any conveyance executed prior to the date of award under such preference.

(h) Where there is a valid, subsisting prior filing by an applicant upon the date of the filing of a good faith claimant's application to purchase under preferential right, and where the good faith claimant shall have exercised his preference right to purchase within ninety (90) days after a decision of the Commissioner under the provisions of this Act, then in such patent as shall be issued to good faith claimant, there shall be added to the free royalty interest reserved to the State and deducted proportionately from good faith claimant's award, as provided in paragraph (g), a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals which may be produced from such land, which royalty shall be awarded by the State to the applicant. But, if the good faith claimant shall not have exercised his preferential right to purchase within ninety (90) days after a decision of Commissioner under the provisions of this Act, then the applicant shall be awarded an oil, gas and mineral lease on not more than seven-eighths of the minerals for not less than One Dollar (\$1) per acre, and for a five-year primary term, subject to such other consideration and terms as may be fixed by School Land Board, and subject to the preference right of a good faith claimant until ninety (90) days after final judicial determination under subsection (f) hereof. Should there be no good faith claimant, or should no good faith claimant exercise his preferential right within the time allowed, then the applicant shall be entitled to buy or lease accordingly, as he may have applied, the vacancy applied for by him and found to exist, for a consideration to be fixed by the School Land

Board as hereinafter provided, but without consideration of potential mineral value.

(i) Any application made under prior laws to purchase or lease unsurveyed school land which is on file in the office of the Commissioner or with any county surveyor and which has not been granted upon the effective date of this Act, shall become null, void, and of no further effect unless there is then pending a suit, or suits, involving the question of whether the land so affected or a part thereof is vacant, or unless the Commissioner shall within nine (9) months after the effective date hereof grant said application, or unless the applicant shall within sixty (60) days after the end of such nine-months period, file an action in the District Court, for the purpose of litigating the question of the existence of a vacant unsurveyed area.

(j) Any person, firm, or corporation aggrieved by any action taken by the Commissioner under the provisions of this Act, or with reference to any application to purchase or lease vacancies, may institute suit in the District Court of the county where any part of the land is situated, but not elsewhere, and there try the issues of boundary, title, and ownership of any alleged vacancy involved, as well as the issues of the preference rights of such person, firm, or corporation, as herein provided. The plaintiff in such suit shall within thirty (30) days after the filing thereof cause a certified copy of the original petition therein to be served by any sheriff or constable of Travis County upon the Attorney General of Texas and the Commissioner, and cause such officer's return showing said service to be filed with the papers in said cause. Whether the Attorney General answers or intervenes in said cause or institutes suit in the first instance, following the filing of such application, the venue of all such suits shall be in the county where such land, or any part thereof, is located. When such litigation shall have been prosecuted to a final judgment, said judgment shall be binding upon the State of Texas. It shall be mandatory for the Attorney General to intervene in behalf of the State in such cases.

#### Unpaid and Delinquent Interest on Sales of School Land

Sec. 7. From and after the passage of this Act all unpaid and delinquent interest on sales of public school land, and annually on November 1st of each year as it becomes delinquent all unpaid interest on public school land sales shall bear interest at the rate of five (5) per cent compounded annually as it accrues on November 1st of each year; and no patent shall be issued upon any land until all compounded interest shall be paid to the time of issuing patent.

#### Lands Subject to Lease; Laws Applicable; Royalties

Sec. 8. All islands, salt water lakes, bays, inlets, marshes and reefs owned by the state, within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Tex-

as, and all unsold surveyed public free school land and all rivers and channels belonging to the state shall be subject to lease by the Commissioner of the General Land Office to any person, firm or corporation for the production of oil, gas, coal, lignite, sulphur, salt and potash that may be therein or thereunder, in accordance with the provisions of all existing laws pertaining to the leasing of such areas for oil and gas; provided that the leasing of minerals other than oil and gas shall not be subject to the provisions of Article 5359, Revised Civil Statutes, 1925, and subsection 5, Section 8-a of Section 1, Chapter 40, Acts of the 42nd Legislature, Second Called Session, 1931;<sup>1</sup> provided further, that at the discretion of the School Land Board the minerals herein enumerated, other than oil and gas, may be leased together or separately, but oil and gas shall only be leased together, and separately from other minerals; provided further, that the royalty reserved to the state shall be not less than one-eighth ( $\frac{1}{8}$ ) of the gross production or value of oil, gas and sulphur and one-sixteenth ( $\frac{1}{16}$ ) of the gross production or value of other minerals.

<sup>1</sup> Section 8-A of this article.

River Beds Belonging to State; Development and Lease of; Board of Mineral Development Created, Powers and Duties

Sec. 8-A. The beds of rivers and channels belonging to the State shall be subject to development by the State and to lease or contract for the recovery of petroleum oil and/or natural gas, in tracts of such size as may from time to time be determined by the hereinafter created board, subject to the conditions contained in this Section.

Subsec. 1. There is hereby created the Board of Mineral Development,<sup>1</sup> which shall consist of the Governor, the Commissioner of the General Land Office and the Chairman of the Railroad Commission of this State, which board shall have the authority to carry out the provisions of this Section, and to employ such assistants as may be necessary from time to time for the accomplishment of the purposes herein set forth.

<sup>1</sup> Abolished and functions transferred to School Land Board, see art. 5421c-3.

Subsec. 2. The Board of Mineral Development is hereby authorized and it is made its duty to advertise for:

(1) Proposals to lease for oil and/or gas development of the River Beds and Channels in this State.

(2) For proposals to drill said River Beds and Channels upon considerations involving compensation in oil and/or gas and/or money of the State, whereby the State will receive a proportion of the oil and/or gas as the same is produced, or by way of Advanced Royalties paid in money.

(3) And for proposals to purchase said minerals in place, or recoverable, without requirement of mineral development.

Subsec. 3. The Board of Mineral Development is hereby expressly authorized to receive bids on all propositions provided for in Subsection 2, and may accept any bid which it may deem to be to the best interests of the State, or it may reject any and all bids. The board shall advertise such proposals not less than fifteen days before lease or sale date as provided in section 9 of Chapter 271, Acts of the Regular Session of the Forty-Second Legislature.

Subsec. 4. In the event the board shall deem it advisable to reject all bids it may advertise for bids or may enter into a contract for the drilling of such wells as it may deem advisable, provided, however, that any well or wells which may be drilled by order of the Board of Mineral Development shall be by contract let upon competitive bids to the lowest and best bidder for a completed well and providing further that any contractor drilling under contract with the Board of Mineral Development shall be required to carry Workmen's Compensation Insurance for all employees engaged in such drilling operation.

Subsec. 5. The School Land Board shall not be authorized to lease or otherwise contract for the development of, and shall not have the power to authorize or contract for the drilling of any river beds or channels situated at the time of executing said lease or contract, more than two miles from a well producing or capable of producing oil or gas in paying quantities, unless an owner of a leasehold or mineral interest in the oil or gas estate in land located adjacent to or within two miles of a river bed or channel shall desire to drill a test well for oil and/or gas in, under or within two miles of such river bed or channel. In such event the owner of such interest shall apply to the School Land Board for an oil and gas lease on such portions of said river beds or channels as he desires to lease and as are available for lease hereunder, indicating the site in or within two miles of said river beds or channels where he desires to drill said well. Whereupon, the School Land Board shall, within sixty (60) days after the date such application is received, using the rules of procedure and pursuant to regulations in effect for the sale and leasing of lands owned by the State of Texas and the leasing of mineral estates in river beds and channels etc. belonging to the State of Texas, as provided by law, lease such river beds or channels to the highest bidder for oil and gas development; provided that said lease shall be limited to such portions of said river beds or channels as are within two (2) miles of a point therein at the end of a line drawn from said designated well site perpendicular to the general course of said river beds or channels; provided further, that such lease shall terminate and be of no further force and effect at the expiration of two years from the date of its delivery to such highest bidder unless on or before such date production of oil or gas in paying quantities shall have been established from some portion of the river beds or channels cov-

ered by said lease or from adjacent or nearby lands with which such river beds or channels covered by said lease, or some portion thereof, have been lawfully pooled or unitized so that royalties payable under said lease are accruing to the State of Texas on such date.

Subsec. 6. All leases and contracts involving development of river beds and channels shall be executed on forms to be approved by the Attorney General and the Board of Mineral Development and shall require of the lessee or contracting party or his or its successors or assigns, the use of the highest degree of care and of all proper safeguards to prevent the pollution of streams, and in the event of failure to meet such requirements the State shall have the right immediately to take charge of said properties, and for such failure said lease may be cancelled at the option of the State.

Subsec. 6a. It is hereby declared, as to any and each lease and/or contract hereafter made by the Board of Mineral Development, to be the policy of this State, with reference to the development of all portions of beds of rivers and channels described in such lease and/or contract, that the activities of the State and of all lessees or contracting parties, their heirs, successors or assigns, under such lease and/or contract, shall conform to the valid laws of this State, and to the valid orders, rules and regulations of any agency of this State, applicable to the development, by others than this State, of petroleum and/or natural gas bearing land within the State; and each lease and/or contract hereafter made by the Board of Mineral Development shall be subject hereto.

Subsec. 6b. As to any and each lease and/or contract heretofore made by the Board of Mineral Development, such Board shall be, and it is hereby, authorized and empowered to revise the same, with the consent of the lessees and/or contracting parties thereunder, their heirs, successors or assigns, in such wise as to subject such lease and/or contract thenceforth to the public policy declared in Subsection 6a. Such revision shall be accomplished by supplemental or modificatory instrument on such terms as the Board of Mineral Development may deem fair and advantageous to this State, but only after a proposal for such revision shall be formally made, in a public document, to the said Board of Mineral Development, by the lessees and/or contracting parties under such lease and/or contract, their heirs, successors or assigns; and provided that in consideration of the consent by such lessees and/or contracting parties, their heirs, successors or assigns, to such revision the Board of Mineral Development shall not reduce the State's share of the oil and/or gas to be received in the future under such lease and/or contract to less than one-fourth of the gross production of oil and/or gas from the land described in such lease and/or contract.

Provided that any revision made under this Act as referred to hereinbefore shall contain in such supplemental or modificatory instrument

the power and authority on the part of the Board of Mineral Development to re-instate any money requirement or reduced royalty requirement at any time that in the opinion of the Board such re-instatement should, in view of the then existing conditions and fairness to the State of Texas under the original lease or contract, be made; and the Board of Mineral Development shall exercise such power whenever in its opinion the interest of the State of Texas requires the exercise of such power; provided, further that said Board may modify said contract as aforesaid by adjusting up or down from time to time the State's portion of said oil and/or money payment as the conditions hereinbefore set forth may justify and which may be equitable to the State and to said contractors or their assigns, but in no event shall the State's portion be less than one-fourth nor more than now provided in said contracts, and in no event shall the Board of Mineral Development have any authority to modify or change said original leases as to gas. Provided, further that no revision made under this Act shall release the lessees or their assigns from the payment to the State for any oil and/or gas produced or the delivery to the State of any oil produced and due the State under the original contracts and produced prior to the effective execution of any revision hereunder.

Provided further, that nothing in such revision shall in anywise relieve any lessee and/or contracting party from any obligation now existing to drill any well either as an offset or otherwise.

"And/or" as used in this Act shall mean and include both and either of the words "and" and "or."

Subsec. 6c. No change shall be made by the Board of Mineral Development that will relieve, release and/or suspend the lessees from the payment of any money and/or royalty now due and payable to the State for oil and/or gas produced to the date that the Board makes any change in the present existing lease contracts.

Subsec. 7. This Section is in no wise intended, or shall be held, to repeal or supersede Chapter 138, Acts of the Regular Session, Forty-First Legislature,<sup>1</sup> which validated, relinquished, quit-claimed, and granted to patentees and awardees and their assignees lands, and minerals therein contained, which lands are included in surveys lying across, or partly across water courses or navigable streams in this State, and which have been patented or awarded as provided in said Chapter 138.

<sup>1</sup> Article 5414a.

Subsec. 8. All moneys collected under the provisions of this Section by the Board of Mineral Development shall be deposited in the State Treasury to the credit of the Mineral Development Fund, out of which disbursements may be made by the Board to carry out the provisions of this Section, for which purposes so much of said fund as may be necessary is ap-

appropriated. All portions of said fund not needed for such purpose shall be from time to time paid into the General Revenue Fund, provided that any portion thereof belonging to the Public Free School Fund under the Constitution and Laws of this State shall be paid to such Fund. And until such time as the Mineral Development Fund shall be ample for the purposes of this Section there is hereby appropriated out of the General Revenue Fund, not otherwise appropriated, the sum of Sixty Thousand (\$60,000.00) Dollars, as an advance to such Fund which shall be repaid out of the funds derived under the operation of this Section.

Subsec. 9. The Governor shall serve as Chairman of the Board of Mineral Development, and no business shall be transacted by said Board except at a meeting of such Board, attended by two or more members, of which meeting notice to all other members shall have been given in writing by the member calling the meeting, and all orders or contracts made or entered into by said Board shall only be authorized at such a meeting and shall be signed by at least two members of the Board, and be approved by the Attorney General as to their legality.

Subsec. 10. In no event shall the Board of Mineral Development enter into any contract to lease any lands without reserving to the State at least one-eighth interest or royalty.

Subsec. 11. The venue of any suit arising out of this Act<sup>1</sup> either by or against said board and of whatever kind or nature is hereby fixed in Travis County.

<sup>1</sup> Probably means section 8-A of this article.

Subsec. 12. No injunction shall be granted against the board, or its agents, or parties under contract with it, to restrain it from enforcing its orders, or contracts, or carrying out any development entered into or contemplated by it under this Act except after notice to the board and its agents or parties with whom it contracted or contemplates contracting, and a hearing is held thereon. Before any injunction or restraining order is issued or becomes effective against the board or any of the parties named in the foregoing sentence the complaining party or parties shall be required by the Court to give bond with good and sufficient sureties in an amount to be fixed by the Court which amount shall be sufficient to protect the State from loss by reason of drainage of the river bed or channel in question or by reason of loss of lease or bonus, consideration, or loss from any other reason whatsoever. The Court in considering the amount of the bond shall take into consideration the probable and possible loss to the State by reason of granting of any such injunction. Such bond shall be made payable to the then Governor of the State of Texas and his successors in office, and recovery for loss to the State occasioned by said action may be had in a suit on such bond brought by the Attorney General. Any bond made or executed by any bonding or surety company as

surety shall be by some bonding or surety company authorized to do business in Texas.

Subsec. 13. Either party to said suit has the right of appeal from the final judgment therein and said appeal shall at once be returnable to the appellate Court and said action so appealed shall have precedence in said appellate Court over all cases, proceedings and causes of a different character therein pending. In the Court of Civil Appeals such Court shall immediately and at as early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the Supreme Court, or writ of error thereto be requested or granted, it is here made the duty of the Supreme Court to immediately set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other cases, proceedings and causes of a different character in such court. All laws and parts of laws in conflict with the provisions of this Section are hereby repealed.

Subsec. 14. The Board, or any person or corporation holding a contract with said Board, including all leaseholders or assignees, or any leaseholder or assignee holding a lease contract with the State or under the State Land Commissioner prior to the enactment of Acts 1931, 42nd Legislature, 2nd Called Session, Page 64, Chapter 40, or<sup>1</sup> what is commonly known as the River Bed or Board of Mineral Development Law, for the development of oil and/or gas resources, in State-owned river beds, streams or channels, is hereby granted the right of Eminent Domain and Condemnation as provided by the General Laws of the State of Texas for the following purposes:

(1) Of securing such additional adjoining lands as may be necessary for erection of power machinery, and construction of storage tanks and slush pits in the operation of said channel or river development and to prevent or lessen the dangers of pollution involved in the drilling of any well in any such river beds or channels.

(2) For the purpose of securing a right of way to and from any well which may be drilled in said river beds or channels so as to enable the Board or any of its contract or leaseholders to go to and from said wells and to transport any materials necessary in the development of said river beds or channels and to transport oil and/or gas away from any wells.

Provided, that at any time hereafter, in all cases, where the landowner and/or other interested parties and the leaseholder to said river beds and/or Board are unable to agree on the measure of damages, if any, and it is necessary to resort to condemnation proceedings, that in the event it should become necessary for any offset well to be drilled by said landowner or other interested party within the area or surface of the land taken, condemned or thus sought to be condemned, the mineral rights of the condemned party shall at all times be supe-

rior to the surface rights of the condemning party, and in the event of any conflict on account of the drilling of any offset well or wells, under and by virtue of a permit from the Railroad Commission, the condemning party shall be compelled to move any interference or hindrance whatsoever therewith, or to go around such offset well, and in the event of his failure or refusal to immediately move any such interfering object or hindrance, upon demand, the owner of the mineral rights shall have the right to immediately do so himself without any liability.

It is the intent of this Act that the mineral rights of the owner shall at all times be superior to the surface rights of the condemning party, and in determining the measure of damages, if any, in such condemnation proceeding, the Commissioners or any other tribunal shall not take into consideration the value of the oil or gas lying under said rights of way of such condemned properties, and this Act, as amended, which same is remedial only, shall apply to all cases or proceedings now pending.

<sup>1</sup> So in enrolled bill, Session Law reads "of."

#### Notice for Bids

Sec. 9. The Commissioner shall fix the minimum price of not less than One Dollar (\$1.00) per acre to be paid, and the day and hour when an area or areas will be subject to lease, and advertise or readvertise such areas at least thirty (30) days before such lease date, except as provided in case of tie bids, under Article 5356 of the Revised Statutes of 1925. The Commissioner may give such notice by distributing printed lists as provided for sales of surface rights of public lands.

#### Terms of Lease

Sec. 10. The areas included herein shall be leased for a consideration, in addition to the cash amount bid therefor, of not less than one-eighth ( $\frac{1}{8}$ ) of the gross production of oil, or the value of same, that may be produced and saved, and not less than one-eighth ( $\frac{1}{8}$ ) of the gross production of gas, or the value of same, and not less than one-eighth ( $\frac{1}{8}$ ) of the gross production of sulphur, or the value of same that may be produced, that may be produced and sold off the area, and not less than one-sixteenth ( $\frac{1}{16}$ ) of the value of all other minerals that may be produced, and an additional sum of twenty-five cents an acre per year for each year thereafter until production is secured. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual rental payments on the acreage. The provisions of this Article in respect to payments of rental after production and the cessation of production shall apply to leases heretofore issued by the State on any area except lands belonging to the State University and eleemosynary institutions. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which the royalty

ceased to be paid and annually thereafter in advance, pay twenty-five cents per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed five (5) years from the date of said lease.

#### Payments Received by Commissioner of General Land Office

Sec. 11. All payments received by the Commissioner of the General Land Office shall be transmitted to the State Treasurer to be credited to the proper funds. All payments for land and for mineral leases and rentals thereon, and for royalties on minerals produced, shall be credited to the permanent school fund, and all interest collected hereunder shall be credited to the available school fund. Payments received on purchase price of a tract of land shall be credited to the permanent school fund, and all payments of interest and rentals shall be credited to the available school fund; and all payments constituting the purchase price of a lease for minerals shall be transmitted to the State Treasurer to the credit of the permanent school fund, and likewise all payments of royalty received from minerals sold under leases, as well as all rentals, shall be credited to the permanent school fund.

#### Prevention of Mineral Development by Governmental Action; Refund of Money Paid

Sec. 11a. If a lessee is prevented from exploring, developing, drilling, or producing minerals from the tract leased to him as a result of the action of any agency of the United States or of this State, during the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation, either on verification of the claim by the School Land Board or on the judgment of a court of competent jurisdiction. A lessee having a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover those moneys paid.

#### Prospecting Land

Sec. 12. Any person or corporation desiring to prospect a tract of land belonging to the State for gold, silver, platinum, cinnabar, and other metallic ores and precious stones may file an application with the Commissioner of the General Land Office designating the area to be prospected, which must be accompanied by a rental payment of Ten (10) Cents per acre, and such applicant shall have a period of one year from date of filing such application within which to prospect the area designated. Within the period of said year he may file an application to lease the area designated for the purpose of mining gold, silver, platinum, cinnabar and other metallic ores and precious stones and remit Fifty (50) Cents an acre as first annual payment of rental on the lease and continue to make such payments from year to year for a period of five (5) years, unless some of

the minerals mentioned herein shall be discovered sooner in paying quantities. On discovery of any such minerals, the payments of such rentals shall cease. On the 20th day of each month the owner of the mine or mines shall pay the royalty due the State, which shall be one-sixteenth ( $\frac{1}{16}$ ) of the value of the minerals sold or moved off the premises. Such payments shall be remitted to the Commissioner of the General Land Office and credited to the account of the Permanent School Fund. The leases shall be drawn and the mines operated in accordance with regulations prescribed by the Governor, Attorney General, and Commissioner of the General Land Office.

[Acts 1931, 42nd Leg., p. 452, ch. 271; Acts 1931, 42nd Leg., 2nd C.S., p. 64, ch. 40; Acts 1933, 43rd Leg., p. 192, ch. 88; Acts 1933, 43rd Leg., p. 309, ch. 120, §§ 1, 1a; Acts 1939, 46th Leg., p. 465, § 1; Acts 1941, 47th Leg., p. 596, ch. 365, § 1; Acts 1943, 48th Leg., p. 453, ch. 301, § 1; Acts 1953, 53rd Leg., p. 77, ch. 57, § 1; Acts 1957, 55th Leg., p. 434, ch. 209, § 1; Acts 1963, 58th Leg., p. 920, ch. 352, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 1698, ch. 491, § 1, eff. May 27, 1971.]

#### Art. 5421c-1. Excess Acreage Where Tract of Land Titled or Patented

In all cases where the area of a tract of land titled or patented exceeds the quantity called for in the title or patent, and where under the existing law the title to all or any part thereof shall or may be affected by the existence of such excess, then any person owning such survey or having an interest therein may pay for such excess acreage at such price as the empowered authority may fix. Any person owning any interest in a titled or patented survey in which excess acreage exists who desires to pay for such excess acreage, shall file with the Land Commissioner a request for an appraisal of the land with corrected field notes in the form now provided by law, together with a statement of the facts pertaining to his right to purchase, which statement shall be sworn to, and such other evidence of his right to purchase as the Commissioner may require. Should it appear that such excess actually exists and that the applicant is entitled to the benefits of the law, then the Commissioner shall execute a deed of acquittance covering such land in the name of the original patentee or his assignees with such reservation of minerals or with no mineral reservation, accordingly as may have been the case when the survey was titled or patented. Such transfer shall inure distributively to the benefit of the true and lawful owners of the survey in proportion to their holdings.

[Acts 1939, 46th Leg., p. 465, § 4.]

#### Art. 5421c-2. Mineral Leases Under Relinquishment Act

No mineral lease executed by an owner or owners of land or minerals under what is commonly known as the Relinquishment Act<sup>1</sup> shall be effective until a certified copy of such lease is filed in the Land Office. No such lease executed after the effective date hereof shall be binding upon the State unless it recites the ac-

tual and true consideration paid or promised therefor.

[Acts 1939, 46th Leg., p. 465, § 4-a.]  
<sup>1</sup> Articles 5367, 5368, 5369 to 5379.

#### Art. 5421c-3. Control and Disposition of Lands Set Apart for Permanent Free School Fund and Asylum Funds and Mineral Estate Within Tidewater Limits; Dedication of Mineral Estate to Permanent School Fund; School Land Board, Creation and Duties; Board of Mineral Development Abolished

1. All lands set apart for the permanent free school fund and the several asylum funds by the Constitution and the laws of this State and the mineral estate in river beds and channels, and the mineral estate in all areas within tidewater limits including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are subject to control and disposition in accordance with the provisions of this Section and other pertinent provisions of this Act and other laws not in conflict herewith; provided, however, that the provisions of this Act shall not apply to those lands awarded to the State of Texas by decree of the Supreme Court of the United States on March 17, 1930, in Cause entitled: The State of Oklahoma vs. The State of Texas, the United States of America, Intervenor,<sup>1</sup> but said lands shall be sold and disposed of in accordance with the provisions of Chapter 185, Acts of the Regular Session of the Forty-second Legislature.<sup>2</sup>

2. The mineral estate in river beds and channels and in all areas within tidewater limits, including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are hereby set apart and dedicated to the permanent school fund.

3. There is hereby created a board to be known as the School Land Board, and to be composed of three (3) members, namely: The Commissioner of the General Land Office, who shall be Chairman, and one (1) citizen of the state appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and one (1) citizen of the state appointed by the Attorney General with the advice and consent of the Senate, who shall serve for a term of two (2) years. The authority of the Attorney General to appoint one of the members of the School Land Board hereunder, including the power to make appointments during the recess of the Senate, shall be the same as the authority provided in the Constitution of the State of Texas for the filling of vacancies in state offices by the Governor, and each appointment made hereunder from time to time by the Governor and by the Attorney General, respectively, shall be made in accordance with and subject to those provisions of the Constitution of the State of Texas authorizing the filling of vacancies in state offices by appointment of the Governor.

4. The duties of the School Land Board shall be to set all dates for the leasing and the

sale of surveyed lands, and to determine the prices at which any land, whether surveyed or unsurveyed, shall be leased or sold, and to perform any other duties that may be imposed upon them by law. All such lands shall be sold and leased subject to the terms and conditions provided by law, except that no land shall be appraised at a less price than Two Dollars (\$2) per acre; provided, however, that lands lying and being situated west of the Pecos River may be appraised at a price not less than One Dollar (\$1) per acre.

5. The School Land Board shall meet on the first and third Tuesdays of each month in the General Land Office, where its sessions shall be held and continued until its docket is cleared, subject to recesses at the discretion of the Board. The Board shall select a secretary who shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board. The Commissioner of the General Land Office is authorized to employ other employees which may be necessary for the discharge of the duties of the Board, and particularly is authorized to employ a geologist and mineralogist, who shall keep informed with reference to the minerals on public school lands and all activities under pending applications and previous leases and sales, and shall report to the Board all information obtained with reference thereto. The employees of the Board shall be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board.

6. The School Land Board shall keep a record of its proceedings to be called its minutes which shall include a docket on which the secretary shall enter all matters to be considered by the Board, the minutes and docket to be subject to inspection by any citizen of Texas desiring to make an examination thereof on payment of such fees as may be prescribed by law for the examination of other Land Office records, the examination to be in all cases in the presence of the secretary of the Board or some clerk designated for that purpose as prescribed by law. All records and proceedings of the Board shall be records and archives of the General Land Office.

7. The School Land Board, as soon after the passage of this Act as may be practicable, shall adopt rules of procedure and regulation for the sale and leasing of areas included herein not inconsistent with this Act and other laws on the subject for the sale and lease of school and asylum lands and the lease of the mineral estate in river beds and channels and islands, lakes and bays within tidewater limits and the bed of the sea, belonging to the State of Texas.

8. The description of public free school land offered for sale or lease shall be in accord with such descriptions as may be found in the School Land Registry of the General Land Office and shall be entered on the docket; and

when applications to purchase either the land or the lease, as the case may be, are filed, the name of the applicant and the amount of his bid shall also be entered on the docket. The minutes shall show the fact of acceptance of a bid or the rejection of a bid and the approval of the minutes will constitute the approval of the act of acceptance or the act of rejection, as the case may be.

9. It shall be the duty of the Commissioner of the General Land Office to furnish the Board from time to time a list of all lands subject to the provisions of this Section.

10. All awards or leases shall be issued by the Commissioner of the General Land Office in accordance with the minutes as approved by the School Land Board.

11. It shall be the duty of the School Land Board to advise the Commissioner in all matters submitted to it for such purpose.

12. The Board shall insert, in at least four (4) daily newspapers in at least three (3) issues of each, thirty (30) days in advance of a sale date, which shall be the first Tuesday in any month, an advertisement to the effect that leases or land will be offered for sale on a certain date and that lists describing the land may be had at the General Land Office.

13. The School Land Board shall have the right to reject any and all bids, but unless the Board elects to reject any and all bids, it shall be required to accept the best bid submitted.

14. (a) All functions now vested by law in the Board of Mineral Development created by Chapter 40, Acts of the Second Called Session of the Forty-second Legislature,<sup>3</sup> are hereby transferred to and vested in the School Land Board, subject to the same powers, rights, duties, restrictions and limitations imposed by law upon the Board of Mineral Development. The Board of Mineral Development is hereby abolished.

(b) Upon the taking effect of this Act, all books, papers, records, property and pending business theretofore made, used, acquired or conducted by the Board of Mineral Development in the exercise of its functions hereby transferred, shall be transferred to and vested in the School Land Board.

(c) All officers and employees of the Board of Mineral Development may be transferred to the School Land Board, and shall perform the duties of the Board as directed by the Commissioner of the General Land Office, subject to the conditions hereinabove set forth. The Commissioner of the General Land Office shall have the power to eliminate unnecessary positions, to transfer officers and employees between positions, and to change the duties, titles and compensation of the existing offices and positions necessary to effect an efficient administration of the Board.

(d) The balances of the appropriations heretofore made to the credit of the General Land Office for the use of the Board of Mineral Development are hereby made available for ex-



penditure by the Commissioner of the General Land Office in the exercise of such functions hereby transferred to and vested in the School Land Board.

15. The Sum of Ten Thousand Dollars (\$10,000), or so much thereof as may be necessary, is hereby appropriated annually out of any funds in the State Treasury, not otherwise appropriated, to pay the salaries and expenses of all persons employed or appointed by the Board as herein provided, and all other expenses necessary for the proper discharge of the duties of the Board. The compensation of all persons employed by the Board shall be in line with salaries paid other State officials and employees holding similar positions and doing similar work.

[Acts 1939, 46th Leg., p. 465, § 5; Acts 1963, 58th Leg., p. 1138, ch. 442, § 5; Acts 1965, 59th Leg., p. 672, ch. 321, § 1.]

<sup>1</sup> See *State of Oklahoma v. State of Texas*, 50 S.Ct. 247, 281 U.S. 109, 74 L.Ed. 731, 1122.

<sup>2</sup> Article 5330a.

<sup>3</sup> Article 5421c, § 8-A.

Acts 1963, 58th Leg., p. 1138, ch. 442, § 5, which purported to amend paragraph 5 of this article, but which was apparently intended to amend paragraph 3 thereof, relating to membership of the School Land Board, was repealed by Acts 1965, 59th Leg., p. 672, ch. 321, § 2. Sections 2 and 3 of Acts 1965, 59th Leg., p. 672, ch. 321 provided:

"Sec. 2. Section 5 of Chapter 442, Acts 58th Legislature, 1963, is hereby repealed; however, the composition of the School Land Board and appointments by the Attorney General of a citizen of the state to be a member of the School Land Board are hereby in all things ratified, approved, and validated, and for the purpose of determining the validity, legality, and effect of all actions of such appointees and of the School Land Board taken between the effective date of Chapter 442, Acts 58th Legislature, 1963, and the effective date of this Act, such appointments and the composition of the School Land Board shall be conclusively presumed to be valid, legal and effective.

"Sec. 3. Each citizen member of the School Land Board is entitled to receive a per diem allowance for each day spent in performance of his duties and reimbursement for actual and necessary travel expenses incurred in the performance of his duties, as provided by the General Appropriations Act."

#### Art. 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board

Sec. 1. The School Land Board, created by House Bill No. 9 of the Forty-sixth Legislature (being Title: Public Lands, Chapter 3, of the General Laws of the Forty-sixth Legislature, 1939,) <sup>1</sup> is hereby authorized to grant and issue easements or surface leases to the United States of America in accordance with the conditions hereinafter set out, on any island, salt water lake, bay, inlet, or marsh within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas, to be used exclusively for any purpose essential to the National Defense.

Sec. 2. When the proper authority or agency of the United States of America shall make application to the School Land Board describing the area which is deemed necessary for use in the National Defense said Board shall issue an easement or surface lease to the United States of America granting and conveying to it the free and uninterrupted use of the area described. Provided that before such lease or leases be granted in any county that the Board

shall notify the County Judge of said county and shall fix a date for hearing at which time all interested persons may be heard in protest or otherwise. Such easement or surface lease shall be effective only so long as the area is used for the purpose of National Defense, and it shall cease and terminate and the State of Texas shall be revested with full title and possession of the area when same is no longer used for such purpose.

Sec. 3. The easements or surface leases granted hereunder shall be upon the express condition that the State of Texas shall retain all of the oil, gas, and other mineral rights in and under the area affected. The consideration to be paid for the use of said areas shall be agreed upon by the School Land Board and the United States of America and it shall be payable to the State of Texas on an annual basis.

Sec. 4. All leases for grazing purposes heretofore issued by the Commissioner of the General Land Office which are covered or partially covered by any easement or surface lease granted hereunder are hereby made subordinate to such easement or surface lease. If the lessee under any existing oil and gas lease heretofore granted by the State on any area affected by an easement or surface lease granted hereunder, shall file or cause to be filed in the General Land Office an agreement, subordinating to the easement or surface lease granted hereunder all rights held by such lessee under such oil and gas lease, then and in that event the running of both the primary and principal terms of such lease shall be suspended during the existence of such easement or lease; provided, however, that lessee continues the annual rental payment stipulated in the lease during such suspended period. Such oil and gas lease shall remain in status quo, and all obligations, duties, rights and privileges existing under such lease shall be inoperative and of no force and effect until the expiration of said easement or surface lease, at which time said oil and gas lease shall again become operative and all of the obligations, duties, rights and privileges, including the payment of rentals under same, shall again attach and be in force as they were on the date of the suspension and continue for the unexpired term of such lease. The School Land Board shall give notice immediately to such lessees that their leases are again in force when said easement or surface lease has terminated; provided, however, that the annual rental payments have been met.

Sec. 5. All areas on which there now exists oil, gas, or other mineral production are specifically excluded from the terms of this Act.

[Acts 1941, 47th Leg., p. 20, ch. 10.]

<sup>1</sup> Articles 5421c to 5421c-3.

#### Art. 5421c-5. Leasing of Islands, Salt Water Lakes, Bays, Inlets, Marshes, and Certain Other Lands; Determination of Price

Sec. 1. All islands, salt water lakes, bays, inlets, marshes, and reefs owned by the State

within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas; all beds of rivers and channels belonging to the State; and all unsold public free school land, both surveyed and unsurveyed, shall be subject to lease by the Commissioner of the General Land Office to any person, firm, or corporation for the production of minerals, except gold, silver, platinum, cinnabar, and other metals, that may be therein or thereunder, in accordance with the provisions of Chapter 271, Acts of the 42nd Legislature as amended,<sup>1</sup> Subdivision 2, Chapter 4, Title 86, Revised Civil Statutes of Texas of 1925,<sup>2</sup> and Title: Public Lands, Chapter 3, Acts of the 46th Legislature, (1939)<sup>3</sup> relating to leasing public areas, insofar as same is not in conflict herewith.

Sec. 2. The price at which any of said land may be leased shall be determined by the School Land Board as created by Title: Public Lands, Chapter 3, Acts of the 46th Legislature (1939). All such leases shall be for a primary term of five (5) years, with such annual delay rental as may be fixed by said Board.

[Acts 1941, 47th Leg., p. 803, ch. 498.]

<sup>1</sup> Article 5421c.

<sup>2</sup> Articles 5353 to 5366.

<sup>3</sup> Articles 5421c to 5421c-3.

#### Art. 5421c-6. Patents Validated

All patents issued prior to the effective date of Article 5421-c as amended by House Bill No. 9 of the Forty-sixth Legislature, such effective date being September 21, 1939, by the authority of the State, under the seal of the State and of the Land Office, signed by the Governor and countersigned by the Commissioner of the General Land Office to parties who for a period of ten (10) years prior to the date of application for the patent had held and claimed the same in good faith, under the provisions of Section 5 of Chapter 271, Acts of the Forty-second Legislature, Regular Session,<sup>1</sup> are hereby ratified and title validated and confirmed in such patentees, their heirs or assigns, subject only to the mineral reservation as contained in Section 4, Chapter 271, Acts of the Forty-second Legislature, Regular Session,<sup>2</sup> and without regard to whether or not such land was located within five (5) miles of a well producing oil or gas in commercial quantities at the time of such patent.

[Acts 1943, 48th Leg., p. 368, ch. 247, § 1.]

<sup>1</sup> Section 5 of article 5421c.

<sup>2</sup> Section 4 of article 5421c.

#### Art. 5421c-7. Prospecting State Lands for Minerals, Including Fissionable Materials

Lands, Waters and Minerals to which Applicable;  
Application for Permit; Rental Payments

Sec. 1. Any tract of land belonging to the State, including all islands, salt and freshwater lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, and that part of the Gulf of Mexico within the jurisdiction of Texas, and all unsold surveyed public free school land and all rivers and channels

belonging to the State and any lands sold with a reservation in favor of the State of minerals thereunder, shall be subject to prospect for all other minerals, except oil, gas, coal, lignite, sulphur, salt, and potash, shell, sand and gravel, and except uranium, and thorium, other fissionable materials, on any lands sold with a reservation in favor of the State of minerals thereunder, by any person, firm or corporation desiring to prospect same by the filing of an application with the Commissioner of the General Land Office, designating the area to be prospected, each such application shall be for an area not in excess of six hundred forty (640) acres with a ten percent (10%) tolerance for tracts, sections, and surveys that contain more than 640 acres. Such application must be accompanied by rental payment of not less than twenty-five cents (25¢) per acre.

#### Surveyed Public Free School Land

Sec. 2. Permits shall be issued by the Commissioner of the General Land Office giving to the first applicant a period of one (1) year from the date of filing his application within which to prospect the area designated. A permit may be extended at the discretion of the Commissioner for periods of one (1) year upon payment of an annual rental of twenty-five cents (25¢) per acre, but in no event to exceed five (5) consecutive years from date of such permit. Permittee may at any time during the effective period of such permit file an application to lease the area covered by the permit, or a designated portion thereof, for the purpose of mining or producing the minerals covered thereby, which application shall be accompanied by the first rental payment of not less than Two Dollars (\$2) per acre. The annual rental payments thereafter during the primary term shall be not less than One Dollar (\$1) per acre, which shall be payable unless production in paying quantities is being obtained and royalty being paid the State thereon. If the designated area is less than that covered by the permit, the applicant shall forward with his application field notes prepared by the county surveyor or a licensed State land surveyor, describing the area so designated.

#### Leases; Issuance; Royalty

Sec. 3. The leases shall be issued by the Commissioner of the General Land Office in accordance with the provisions of this Act and shall be for a primary term of five (5) years and as long thereafter as the minerals covered thereby are produced in paying quantities. The royalty shall be not less than  $\frac{1}{16}$ th of the value of the minerals produced under said lease. The Commissioner may include in such leases such other provisions as he may deem necessary for the protection of the interests of the State.

#### Rental and Royalty Payments; Disposition

Sec. 4. All rental and royalty payments shall be paid to the Commissioner of the General Land Office at Austin, Texas. All such

payments shall be credited to the account of the Permanent School Fund.

**Assignability of Permits and Leases; Filing Fee**

Sec. 5. Permits shall not be assignable. All leases may be assigned in quantities of not less than forty (40) acres unless there be less than forty (40) acres remaining out of the tract originally leased in which case such lesser area may be assigned. Such assignments shall be recorded in the county in which the land is located and a certified copy thereof, certified by the county clerk from his records, forwarded to the General Land Office within ninety (90) days from the date of recordation, accompanied by a One Dollar (\$1) filing fee for each tract affected.

**Saving Clause**

Sec. 6. Nothing herein shall apply to, alter, or affect any rights presently existing on the effective date of this Act under a valid permit issued by the Commissioner of the General Land Office under the provisions of Chapter 271, Acts, Forty-second Legislature, 1931, as amended by Section 1, Chapter 365, Acts, Forty-seventh Legislature, 1941, as amended by Section 1, Chapter 301, Acts, Forty-eighth Legislature, 1943, codified as Section 12, Article 5421c, Vernon's Civil Statutes; provided, however, that should the owner of a valid outstanding permit on the effective date of this Act desire that his lease provide for a term to continue as long as production is secured in paying quantities, he shall pay the rental and royalty specified in this Act.

**Forfeiture of Lease; Grounds**

Sec. 7. If the owner of a lease shall fail or refuse to make payment of any sum due, either as rental on the lease or royalty on production or if such owner or his authorized agent should knowingly make any false return or false report concerning the lease, or if such owner or his agent should refuse the Commissioner or his authorized representative access to the records or other data pertaining to operations under the lease, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Commissioner, and when forfeited the area covered thereby shall again be subject to application for a prospect permit under the same conditions controlling the original application.

**Amendment of Valid Existing Permits and Leases**

Sec. 8. The owners of valid existing permits and leases on the effective date of this Act may, upon written application to the Commissioner of the General Land Office, have such permits and leases amended by instrument in writing, executed by the Commissioner, to include the minerals covered by this Act. Applications for amendments to existing permits shall be accompanied by a payment of Ten Cents (10¢) per acre, and applications for amendments to existing leases shall be accom-

panied by a payment of One Dollar (\$1.00) per acre, such payments being in addition to those already made. If such owners do not make application for amendments within sixty (60) days after date of letter giving written notification by the Commissioner of the General Land Office, forwarded to the last known address of such owner as shown in the files of the General Land Office, the minerals not covered by such existing permits and leases shall become subject to other applications for permits and leases.

[Acts 1955, 54th Leg., p. 1243, ch. 497; Acts 1957, 55th Leg., p. 435, ch. 210, §§ 1 to 3; Acts 1963, 58th Leg., p. 933, ch. 362, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 2853, ch. 934, §§ 1, 2, eff. June 15, 1971.]

Acts 1963, 58th Leg., p. 933, ch. 362, § 2, was a savings provision; section 3 thereof repealed all conflicting laws and parts of laws.

Section 3 of the 1971 act amended art. 5421c-10 and sections 4 and 5 thereof provided:

"Sec. 4. Nothing herein shall alter or affect any rights granted by any prospecting permit issued under Chapter 497, Acts of the 54th Legislature, 1955 (Article 5421c-7, Vernon's Texas Civil Statutes), prior to the effective date of this Act or by any prospecting permit issued pursuant to an application filed under said article prior to the effective date of this Act, or by any lease which may be issued pursuant to any such prospecting permit, or by any lease issued under said article prior to the effective date of this Act.

"Sec. 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications thereto, and to this end the provisions of this Act are declared to be severable."

**Art. 5421c-8. School Land Board; Authority to Charge Appraisal Fee; Disposition; Refund of Unused Fees**

Sec. 1. The School Land Board of the State of Texas, as created by Subdivision 3 of Section 5 of Chapter 3, Acts of the Forty-sixth Legislature, Regular Session 1939,<sup>1</sup> is hereby authorized and directed to charge applicants for the purchase of excess acreage and unsurveyed public free school lands, an appraisal fee for appraising such excess acreage and unsurveyed public free school lands for the purpose of determining the prices at which such lands are to be sold by the State.

Sec. 2. Such fees shall be in such amounts as may be fixed by the School Land Board and shall be paid to the Commissioner of the General Land Office. Any such fees which, in the opinion of the Board, are unused shall be refunded to the applicants paying same. The Commissioner shall deposit fees which are not refunded in the State Treasury in the Special Fund created by Chapter 415, Acts of the Fifty-fourth Legislature, Regular Session, 1955.<sup>2</sup> The moneys so deposited, or so much thereof as may be necessary, are hereby appropriated to the General Land Office for the payment of salaries, travel expenses and other expenses of personnel necessary to accomplish such appraisals or other work for the School Land Board.

Sec. 3. The provisions of this Act shall be cumulative of all other laws not in conflict

herewith, but where a conflict exists, this Act shall be controlling.

[Acts 1957, 55th Leg., p. 827, ch. 355.]

<sup>1</sup> Article 5421c-3, subd. 3.

<sup>2</sup> Article 5382d-1.

**Art. 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations**

The time for the payment of all notes or obligations executed by purchasers of school land for the unpaid balance of principal due the state thereon which are due or will become due prior to November 1, 1966, is hereby extended to November 1, 1971, subject to all the pains and penalties provided in the Acts under which the purchases were made; provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installments of interest; and provided further, that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate of one percent (1%) per annum higher than originally provided for, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, 42nd Legislature.<sup>1</sup> In cases wherein fifty percent (50%) or more of the balance of principal remaining unpaid has been paid by November 1, 1971, then a further extension until November 1, 1981, shall be granted for the payment of the remainder, subject to the conditions herein made to the extension to November 1, 1971.

[Acts 1961, 57th Leg., p. 901, ch. 399, § 1.]

<sup>1</sup> Article 5421c, § 7.

**Art. 5421c-10. Leasing of Certain Minerals**

Owner of Soil as State Agent for Leasing Purposes;  
Terms and Conditions

Sec. 1. The State hereby constitutes the owner of the soil its agent for the purpose of leasing, upon such terms and conditions as may be prescribed by the School Land Board, to any person, firm or corporation, the coal, lignite, sulphur, potash, uranium, and thorium (as well as any minerals produced in conjunction with any of same) that may be upon and within surveys, and portions of surveys, heretofore sold with all minerals reserved to the State.

Authority to Lease; Forms; Bonuses,  
Rentals and Royalties

Sec. 2. The owner of the soil is hereby authorized to lease to any person, firm or corporation, the coal, lignite, sulphur, potash, uranium and thorium that may be thereon or therein, upon the lease forms prepared by the General Land Office. All of said minerals may be leased together or separately. For any lease so made and executed, the lessee shall pay to the State sixty percent (60%) of all bonuses agreed to be paid therefor, and sixty percent (60%) of all rentals and royalties payable thereunder, and the lessee shall pay to the

owner of the soil forty percent (40%); provided that, in the event of production, the State shall receive not less than one-sixteenth ( $\frac{1}{16}$ th) of the value of said minerals so produced.

Contents of Lease; Filing

Sec. 3. No lease executed by the owner of the soil shall be binding on the State unless it recites the actual and true consideration paid or promised therefor, and no lease shall be effective until a certified copy thereof is filed in the General Land Office and the bonus accruing to the State paid to the Commissioner. The Commissioner of the General Land Office is hereby given the right to reject and refuse for filing any lease submitted which he feels is not to the best interest of the State.

Payments to Owner in Lieu of Damages

Sec. 4. All payments made by the lessee to the owner of the soil as herein provided and the acceptance thereof by the owner shall be in lieu of all damages to the soil.

Payments to State through Commissioner of General Land Office; Affidavits; Inspection of Documents or Papers

Sec. 5. All royalties and other payments accruing to the State under this Act shall be paid to the State through the Commissioner, at Austin, Texas, and deposited to the fund to which the minerals presently belong; and each payment shall be accompanied by the affidavit of the owner of the lease, or his authorized agent, showing the amount produced and marketed during the month, to whom sold, the selling price as shown by the copies of smelter, mint, mill, refinery, or other returns or documents attached thereto. All books, accounts, weights, wage contracts, correspondence and other documents or papers in any way pertaining to production hereunder shall at all times be open to the inspection of the Commissioner, or his authorized representatives.

Failure of Lessee to Comply with Law or Lease;  
Forfeiture of Lease; Notice; Reinstatement

Sec. 6. If the lessee, or his assignee, or sub-lessee, or receiver, or other agent in control of said lease, shall fail or refuse to make payment of any royalty within thirty (30) days after it becomes due, or if such person should fail or refuse the proper authorities access to the records pertaining to the operations, or if such person should knowingly fail or refuse to give correct information to the proper authorities, the lease and all rights thereunder shall be subject to forfeiture by the Commissioner, and he may forfeit same when sufficiently informed of the facts which authorize a forfeiture, and, in such event, shall write on the wrapper containing the papers relating to such lease, and sign officially, words declaring such forfeiture; and the lease and all rights thereunder shall thereupon be forfeited, together with all payments made thereunder. Notice of such action shall be forthwith mailed to the persons shown by the records of the General

Land Office to be the owner of the soil and the owner of the forfeited lease at their last known addresses as shown by the records of said Office. Upon proper compliance with the provisions of this Act by the owner of the forfeited lease within thirty (30) days after the declaration of forfeiture, the lease may, at the discretion of the Commissioner, and under the terms of this Act, and such other terms as the Commissioner may prescribe, be reinstated. If such lease is not reinstated within the time prescribed above, the owner of the soil shall again have the right, as Agent of the State, to lease the minerals as herein provided.

Lien of State

Sec. 7. The State shall have a first lien on all minerals produced from any lease to secure the payment of all unpaid royalty or other sums that may be due hereunder.

Application of Law

Sec. 8. The provisions of this Act shall not apply to nor in any manner affect oil and gas, and shall not affect any of the provisions of Chapter 81, Acts of the 36th Legislature, Second Called Session, 1919,<sup>1</sup> and amendments thereto, commonly known as the Relinquishment Act, and Chapter 497, Acts of the 54th Legislature, Regular Session, 1955,<sup>2</sup> and amendments thereto, pertaining to the prospecting and leasing of other minerals.

Savings Clause

Sec. 9. If any section, paragraph, sentence, or any part of this Act be declared unconstitutional or void for any reason, such declaration shall not affect, impair, or nullify the validity of any of the remaining portions hereof.

Repeals

Sec. 10. Articles 5383 through 5403, inclusive, Vernon's Texas Civil Statutes, and all other laws, or parts of laws, which may be in conflict herewith, are hereby repealed; provided that any rights acquired under and pursuant to Article 5388 et seq. prior to the effective date of this Act shall not be affected by such repeal, and the rights, powers, duties and obligations conferred or imposed by such laws with reference thereto shall be governed by the laws herein repealed.

[Acts 1967, 60th Leg., p. 35, ch. 16, eff. March 15, 1967; 1971, 62nd Leg., p. 2853, ch. 934, § 3, eff. June 15, 1971.]

<sup>1</sup> Article 5367 et seq.

<sup>2</sup> Article 5421c-7.

Art. 5421c-11. Sulphur Production Agreements

Sec. 1. Subject to the provisions of this Act, the Commissioner of the General Land Office, on behalf of the State of Texas or any fund belonging thereto, is authorized to execute agreements that provide for the operation of areas as a unit for the exploration, development, and production of sulphur, and to commit to such agreements the royalty interests in sulphur reserved to or provided for the state or

any fund thereof by law, in or in connection with any patent, award, or mining claim, in any contract of sale, or under the terms of any lease lawfully made by an official, board, agent, agency or authority of the state; provided (a) that agreements that commit such royalty interests in lands set apart by the Constitution and laws of this state for the Permanent Free School Fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, are approved by the School Land Board, and are executed by the owners of the soil if they cover lands leased for sulphur under Article 5421c-10, Vernon's Texas Civil Statutes, Acts, 1967, 60th Legislature, page 35, Chapter 16; (b) that agreements that commit such royalty interests in lands or areas other than those mentioned in the preceding clause (a) of this Section 1, are approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of said lands or areas for sulphur; and (c) that any such agreement is found by the Commissioner of the General Land Office to be in the best interest of the state.

Sec. 2. Any agreement authorized to be executed by this Act may include the following provisions:

(1) that operations incident to the drilling of a well upon any portion of the unit shall be deemed for all purposes to be the conduct of such operations upon each tract in the unit;

(2) that the production allocated by the agreement to each tract included in a unit shall, when produced, be deemed for all purposes to have been produced from such tract;

(3) that the royalty interest reserved to or provided for the state or any fund thereof as aforesaid on production from any tract included in the unit shall be paid only on that portion of the production from the unit which is allocated to the tract in accordance with the agreement;

(4) that each such lease included in the unit shall remain in force as long as the agreement remains in effect, and upon termination of the agreement each such lease shall thereafter continue in force in accordance with the terms and provisions of such lease; and

(5) such other terms, conditions, and provisions as may be deemed to be in the best interest of the state by the Commissioner of the General Land Office and any board, official, agent, agency or authority of the state vested with authority to lease or approve the leasing of said lands or areas for sulphur.

Sec. 3. The provisions of this Act are and shall be held and construed to be cumulative of all laws of this state on the subject treated of

and embraced in this Act, and those prior laws in conflict herewith, to the extent only that they may be in conflict, are hereby repealed. Provided, however, that the provisions of this Act shall not be construed to apply to any land under the control and management of the Board of Regents of The University of Texas System.

Sec. 4. Agreements, and operations thereunder, in accordance with this Act, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Title 126, Revised Civil Statutes, 1925, as amended, nor Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, known as Anti-Trust Acts. However, if any court should find a conflict between this Act and Title 126, Revised Civil Statutes of Texas, 1925, as amended, or Chapter 3, Title 19, Penal Code of Texas, 1925, as amended, then this Act is intended as a reasonable exception thereto, necessary for the above stated public interests; provided further, that if any court should find that a conflict exists between this and the above mentioned laws, and that this Act is not a reasonable exception thereto, then it is the intent of the Legislature that this Act, or any conflicting portion hereof, shall be declared invalid rather than declaring the above mentioned Anti-Trust Laws, or any portion thereof, invalid.

[Acts 1969, 61st Leg., p. 197, ch. 79, eff. April 17, 1969.]

**Art. 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision**

Sec. 1. No land owned by a political subdivision of the State of Texas may be sold or exchanged for other land without first publishing in a newspaper of general circulation in the county where the land is located or in an adjoining county, if there is no such newspaper, a notice that the land is to be offered for sale or exchange to the general public, its description, its location and the procedures under which sealed bids to purchase the land or offers to trade for the land may be submitted. Notice shall be so given at least on two separate occasions and no sale or exchange shall be held less than 14 days after the last notice.

Sec. 2. Bid procedures and publication requirements as set forth in Section 1 of this Article shall not be applicable in the sale or disposal of real property interests belonging to a political subdivision in the following circumstances:

(a) Narrow strips of land, or land so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development control ordinances, in which event such land may be sold to the abutting property owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(b) Streets or alleys, whether owned in fee or used by easement, in which event such land or interest may be sold to the abutting owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(c) All types of easements where the abutting property owner or owners also own the underlying fee simple title, in which event such land or interest may be sold to the abutting property owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(d) Any land or interest therein which was originally acquired for the purpose of streets, rights-of-way or easements which the political subdivision chooses to trade or exchange as consideration for other land acquired for streets, rights-of-way or easements, including transactions which may be partly for cash and partly by trade or exchange.

(e) Land owned by a political subdivision which it desires to have developed by contract with an independent foundation.

Sec. 3. Nothing in this Act shall require the governing body of any such political subdivision to accept any bid or offer or be required to consummate any sale or trade and does not apply to lands in the Permanent School Fund that are authorized by Legislative Act to be exchanged or traded for other lands of at least equal value.

Sec. 4. Any conveyance, sale or trade made under the exemptions set forth in Section 2, shall never be for less than the fair market value of the land or interest being conveyed, sold, or traded, as determined by an appraisal obtained by the political subdivision, which shall be conclusive of the fair market value thereof.

[Acts 1969, 61st Leg., p. 1512, ch. 455, eff. June 10, 1969; Acts 1973, 63rd Leg., p. 256, ch. 124, § 1, eff. May 18, 1973.]

**Art. 5421c-13. Expired**

This article, derived from Acts 1973, 63rd Leg., p. 1631, ch. 590, authorized the School Land Board, in conjunction with the General Land Office, to acquire certain interests in land by trading interests in Public Free School Fund Lands and setting certain requirements for such trades.

By the terms of § 3 of the Act, said authority expired on December 31, 1974 "and no trades shall be made after that date."

**Art. 5421d. Patents to Lands Formerly Claimed as in New Mexico**

Sec. 1. That the Commissioner of the General Land Office is authorized and requested to prepare and issue, and the Governor is authorized to execute and deliver, patents for the lands and accretions thereto, heretofore claimed by New Mexico to be in that state, but determined by the Supreme Court of the United States by Decree entered April 9, 1928 (New Mexico against Texas, 276 U.S. 556) to be

in Texas, to the persons who, on April 9, 1928, were in actual bona fide possession of said lands and claiming title to such lands under patent from the United States.

Sec. 2. In order to receive a patent under this Act, the person desiring such patent shall first make written application to the Commissioner of the General Land Office, describing the land for which a patent is sought and shall show in such application the facts necessary under this Act to entitle applicant to a patent hereunder, and the applicant shall verify the allegations in the application by any accompanying Affidavit, stating that such allegations are true to the best of the knowledge and belief of the applicant, and it shall be necessary that any such application be filed in the office of the Commissioner of the General Land Office within five (5) years from the date upon which this Act goes into effect, and the applicant shall, upon filing said application, deposit with the Commissioner of the General Land Office One Dollar (\$1.00) for each acre or fractional part of an acre in the land covered by the application, which shall constitute the purchase price for said land, and upon the delivery of any patent to any person under this Act, the purchase price shall be applied to the Public School Fund of the State of Texas.

Sec. 3. It is further provided that any land acquired by patent issued under this Act shall be subject to the same liens other than liens for taxes and water and like quasi public charges that would have been against such land had it been in New Mexico.

Sec. 4. It is provided that patents issued under this Act shall be merely quitclaims, and the title conveyed by such patents shall be subject to any prior conveyances by this State, and the patents shall so read.

Sec. 5. As used in this Act, the term "person" applies to and includes an individual, corporation, partnership, or association.

[Acts 1933, 43rd Leg., p. 634, ch. 212.]

#### **Art. 5421e. Division of Profits Between State and United States from Land Improvements**

Sec. 1. That where as a result of improvements made on lands owned by the State or by any county or city of the State by the Federal Government with funds appropriated and expended under the provisions of Public No. 5, an Act of the Seventy-third Congress of the United States, approved March 31, 1933, and providing "for the relief of unemployment through the performance of useful public work and other purposes," there accrues upon the sale of said lands or from the sale of its products, a direct profit to the State resulting directly from such work, the profits so arising shall be divided equally between the State and the Federal Government until the State shall have paid for the work done on each particular tract of land, or its products so sold, at the rate of One (\$1.00) Dollar per day per man for the time spent on such work, not to exceed,

however, Three (\$3.00) Dollars per acre so improved.

Sec. 2. The provisions of this Act shall not apply to lands held by the State, or by any county of the State for public free school purposes or for university purposes.

[Acts 1933, 43rd Leg., p. 799, ch. 233.]

#### **Art. 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands**

The time for the payment of all notes or obligations executed prior to November 1, 1901, by purchasers of school land for the unpaid balances of principal due the State thereon is hereby extended for a period of ten (10) years from and after the passage of this Act, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, Forty-second Legislature.<sup>1</sup>

[Acts 1934, 43rd Leg., 3rd C.S., p. 76, ch. 37, § 1.]

<sup>1</sup> Article 5421c, § 7.

#### **Art. 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts**

The time for the payment of all notes or obligations executed by purchasers of school land for the unpaid balance of principal due the State thereon which are due or will become due prior to November 1, 1951, is hereby extended to November 1, 1951, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, Forty-second Legislature.<sup>1</sup>

[Acts 1941, 47th Leg., p. 351, ch. 191, § 1.]

<sup>1</sup> Article 5421c, § 7.

#### **Art. 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326**

The purchasers or their vendees, heirs or legal representatives who have used, occupied, and made improvements on lands prior to the date of forfeiture, and which lands have been forfeited under the provisions of Article 5326,

Revised Civil Statutes of Texas as amended by said House Bill No. 56;<sup>1</sup> and who shall have, within six months after the expiration of the five year limitation period provided for reinstatement in Section 3 of said House Bill No. 56,<sup>2</sup> and prior to January 1, 1947, paid or tendered payment to the Commissioner of the General Land Office of all delinquent interest, accompanied by written requests for reinstatement, may have their claims reinstated by renewing such requests and paying all delinquent interest up to the date of reinstatement.

[Acts 1947, 50th Leg., p. 275, ch. 169, § 1.]

<sup>1</sup> Acts 1941, 47th Leg., p. 351, ch. 191.

<sup>2</sup> Article 5326.

#### Art. 5421g. Expired

This article, derived from Acts 1939, 46th Leg., p. 463, withdrew all public free school lands from sale or lease from the effective date of the Act until the expiration of 90 days from the adjournment of the regular session of the legislature.

#### Arts. 5421h-1, 5421h-2. Repealed by Acts 1971, 62nd Leg., p. 658, ch. 58, § 2, eff. Aug. 30, 1971

Acts 1971, 62nd Leg., p. 110, ch. 58, repealing these Articles, enacts the Texas Water Code.

#### Art. 5421i. Suspension of Running of Primary Term of Oil and Gas Lease Pending Litigation

The running of the primary term of any oil, gas, or mineral lease heretofore or hereafter issued by the Commissioner of the General Land Office, which lease has been, is, or which may hereafter become involved in litigation relating to the validity of such lease or to the authority of the Commissioner of the General Land Office to lease the land covered thereby, shall be suspended, and all obligations imposed by such leases shall be set at rest during the period of such litigation. After the rendition of final judgment in any such litigation, the running of the primary term of such leases shall commence again and continue for the remainder of the period specified in such leases, and all obligations and duties imposed thereby shall again be operative provided such litigation has been instituted at least six (6) months prior to the expiration of the primary term of any such leases. Provided, further, that the lessee shall pay all annual delay rentals and any royalties which accrue during the period of litigation the same as during any other period of the extended primary term. Such rentals paid during the litigation period shall be held in suspense and returned to the lessee in the event the State is unsuccessful in any such litigation.

[Acts 1941, 47th Leg., p. 1405, ch. 637, § 1; Acts 1951, 52nd Leg., p. 750, ch. 406, § 1.]

#### Art. 5421j. Grant of Filled-in Land to City of Corpus Christi

Sec. 1. All right, title and interest of the State of Texas in and to all land within the area hereinafter mentioned, hitherto lying and situated under the waters of Corpus Christi

Bay for and in consideration of the sum of Ten Thousand Dollars (\$10,000) cash, is hereby relinquished, confirmed and granted unto the said City of Corpus Christi, its successors and assigns, for public purposes, to-wit:

Being all of that filled-in land lying and being situated in Nueces County, Texas, landward behind the seawall and easterly of the shoreline of Corpus Christi Bay as shown in Survey No. 803 and in the patent from the State of Texas to the City of Corpus Christi, Texas, said patent being dated January 4, 1924, and being Patent No. 86, Volume 21-A.

Sec. 2. All exchanges, sales and conveyances hitherto made by the City of Corpus Christi of property within the area described in Section 1 are hereby ratified; and such property is confirmed, relinquished and granted unto the respective assignees of the City of Corpus Christi, and to their heirs, successors, and assigns, without limitation as to the use thereof to be made by them.

Sec. 3. All exchanges of property, sales of property and conveyances thereof that may be made in the future by the City of Corpus Christi of property, within the area described in Section 1, that has been laid out and platted into lots, blocks or tracts for uses of private ownership as shown on a plat of the Bay Front Plan of said City of Corpus Christi, on file in the General Land Office of Texas and that may be necessary to adjust the titles and boundaries between the City and other owners are hereby authorized and said City of Corpus Christi is hereby empowered to make such exchanges, sales and conveyances; and all such property as may be so exchanged, sold and conveyed, is hereby confirmed, relinquished and granted unto the respective assigns of the City of Corpus Christi, and to their heirs, successors and assigns forever, without limitation as to use thereof to be made by them.

Sec. 4. The consideration for this land shall be paid to the Commissioner of the General Land Office of the State of Texas for the benefit of the Permanent Public Free School Fund; and a patent to said lands shall be issued to the City of Corpus Christi by the Governor and the Commissioner of the General Land Office of the State of Texas. Upon the payment of the said consideration and the issuance of said patent, the title of the City of Corpus Christi to the said lands shall become absolute, subject to the reservations herein made.

Sec. 5. All mines and minerals, and the mineral rights including oil and gas are hereby specially reserved to the State under that part of said area described in Section 1, which has been filled, laid out and constructed for use by the City of Corpus Christi as streets, public drives, parks, boulevards, and seawall, and all minerals and mineral rights under the remainder of said land are hereby relinquished and released unto the City of Corpus Christi and its assigns.



Sec. 6. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi. [Acts 1945, 49th Leg., p. 391, ch. 253.]

**Art. 5421j-1. Lease of Filled-in Land by City of Corpus Christi**

All property transferred by the State of Texas to the City of Corpus Christi by the provisions of Chapter 253, Acts of the 49th Legislature, Regular Session, 1945,<sup>1</sup> may be leased by the governing body of the City of Corpus Christi for such time and under such terms and conditions and for such purposes as determined by the governing body of the City of Corpus Christi to be to the best interest of the city. The governing body of the City of Corpus Christi shall lease such property in accordance with the procedure prescribed by the charter of the City of Corpus Christi for leasing lands owned by the city.

[Acts 1957, 55th Leg., p. 488, ch. 235, § 1.]

<sup>1</sup> Article 5421j.

**Art. 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State**

Sec. 1. The City of Corpus Christi is hereby authorized and given the power and authority to lease those certain submerged lands described in Section 4 herein and heretofore relinquished by the State of Texas to the City of Corpus Christi, to any person, firm or corporation, owning lands, land fill or shore area adjacent to the described submerged lands, without restriction as to public or private use thereof, upon whatever terms and conditions the governing body of the City of Corpus Christi deems proper, for any period or term not to exceed fifty (50) years.

Sec. 2. The rights and appurtenances vesting in a Lessee of the City of Corpus Christi in and to those submerged lands shall be limited only by such limitations as might be imposed in the lease which the City of Corpus Christi deemed proper and in the best interest of the City of Corpus Christi; provided that any lease shall contain a provision prohibiting the Lessee, or assigns thereof, from erecting or maintaining thereon any structure or structures, such as buildings, with the exceptions of yacht basins, boat slips, piers, dry-docks, breakwaters, jetties or the like; and provided further that the right to use the waters embraced by the lease shall be reserved to the public, though the boat slips, piers, dry-docks, and the like may be limited to the private use of the Lessee.

Sec. 3. The power and authority granted hereunder to the City of Corpus Christi with respect to the submerged lands described in Section 4 may be exercised only after local referendum election at which a majority of those qualified and voting favor approving the passage of the ordinance authorizing such lease.

Sec. 4. This Act pertains to a strip of submerged land having dimensions of 500 feet by approximately 2050 feet, having as its West

line the East line of the C. G. Glasscock 22.39 acre tract (as such tract is reflected on the map or plat prepared by J. M. Goldston under his certificate of September 8, 1954, and being a survey of the C. G. Glasscock property attached as Exhibit "A" to exchange deed between the City of Corpus Christi, Texas, and the said C. G. Glasscock dated February 2, 1955, recorded in Volume 674, Page 193 of the Deed Records of Nueces County, Texas); having as its East line a line run parallel to and 500 feet East of (measured at right angles) the East line of the C. G. Glasscock 22.39 acre tract above referred to; having as its South line an Easterly projection of the South line of the C. G. Glasscock 22.39 acre tract above referred to from the Southeast corner of said tract (identified by new 2" I.P.) to the point of intersection with the East line above referred to; and having as its North line an Easterly projection of the center line of Buford Street commencing with a new 2" I.P. located at the intersection of the extension of the center line of Buford Street with the East line of the C. G. Glasscock 22.39 acre tract and continuing along a projection of said center line to the point of intersection with the East line of this tract as above defined.

Sec. 5. This Act shall not be construed to grant or convey to the City of Corpus Christi the title to any oil, gas or other mineral which was not already owned by the City of Corpus Christi at the enactment hereof.

Sec. 6. If any laws or parts of laws are in conflict with the provisions of this Act, then the provisions of this Act shall control.

[Acts 1961, 57th Leg., p. 1184, ch. 536.]

**Art. 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission**

Sec. 1. In order that the State Highway Commission may have title to and control of the more or less submerged right of way necessary for the construction and maintenance of a proposed Causeway and its Approaches, across Nueces Bay and the Pass connecting Nueces Bay and Corpus Christi Bay in San Patricio and Nueces Counties, as described in Section 2 of this Act, and as shown on the right of way map on file in the State Highway Department at Austin, Texas, and entitled, Control 101-5 & 6 in San Patricio and Nueces Counties, Causeway across Nueces Bay and the Pass connecting Nueces Bay with Corpus Christi Bay on Highway U.S. 181 from Beach Drive in Portland, San Patricio County, and North Beach in Corpus Christi, Nueces County, the State hereby conveys title to and control of the submerged right of ways described in Section 2 of this Act, and as shown on the right of way map above stated, but no part of this Act is to be construed so as to interfere nor conflict with the rights and authority of the State Game, Fish and Oyster Commission, except that the State Highway Commission shall have the full right and authority to take and use, at any time and in any quantity desired, any and

all materials within the limits of these tracts, and is exempted from the payment of any and all compensation for any and all materials taken therefrom.

Sec. 2. Field Notes of a survey of 385.638 acres, more or less, of submerged lands and tidewater flats, and situated under the waters of Nueces Bay between Engrs. centerline Sta. 774/50 and Sta. 991/20, about Latitude  $27^{\circ}51'$  North and Longitude  $97^{\circ}22'$  West, taken from U.S.C. & G.S. Chart No. 1117, and being more particularly described as follows:

Parcel No. 1.

Beginning at the intersection of the centerline of proposed U. S. Hwy. No. 181 with the North Shoreline of Nueces Bay and the South line of Beach Drive in the Town of Portland, the same being Engrs. centerline Sta. 774/50;

Thence, in a southeasterly direction following the meanders of the shoreline of Nueces Bay to a point which is 300' from and at right angles to Engr. centerline Sta. 774/50;

Thence,  $S42^{\circ}55'$  W, a distance of 3076.1' to a point which is at right angles to and 700' from Engrs. centerline Sta. 805/00;

Thence  $S50^{\circ}23'$  W, parallel to and 700' from Engrs. centerline a distance of 500' to a point in the North line of the C. W. Egerly Survey, Patent 459, Abst. 111;

Thence, following the northern boundary line of said survey,  $S84^{\circ}00'$  W, a distance of 750' to a corner;

Thence,  $S66^{\circ}00'$  along said northern boundary line at 500' across Engrs. centerline Sta. 819/85 and at 722.2' a corner;

Thence,  $S48^{\circ}30'$  W, continuing along said northern boundary line a distance of 1388.9' to a corner;

Thence,  $S27^{\circ}00'$  W, at 228' cross Engrs. centerline Sta. 838/00 and at 1288.3' a re-entrant corner of said C. W. Egerly Survey;

Thence,  $N55^{\circ}00'$  W, at 400' cross Engrs. centerline Sta. 848/60 and at 527.8' a corner;

Thence,  $S62^{\circ}30'$  W, continuing along the northern boundary line of the C. W. Egerly Survey, a distance of 1950' to a point;

Thence  $N50^{\circ}23'$  E, parallel to and 600' from the centerline of proposed U. S. Hwy. No. 181 a distance of 6290' to a point at right angles to and 600' from Engrs. centerline Sta. 805/00;

Thence,  $N11^{\circ}43'$  E, a distance of 640.2' to a point which is at right angles to and 1000' from Engrs. centerline Sta. 800/00;

Thence,  $N50^{\circ}23'$  E, parallel to and 1000' from Engrs. centerline a distance of 2000' to the north shoreline of Nueces Bay;

Thence, following the meanders of said shoreline a distance of approximately 1150' to the place of beginning, containing 184.334 acres, more or less.

Parcel No. 2.

Being a triangular shaped piece of land opposite Engrs. centerline Sta. 879/40 to

Sta. 886/90 lying adjacent to and North and West of a North and West boundary line of the C. W. Egerly Survey, Pat. 459, Abst. 111, and being more particularly described as follows:

Beginning at a point on a west line of the aforementioned C. W. Egerly Survey, said point being at right angles to and 600' from Engrs. centerline Sta. 879/40;

Thence,  $S5^{\circ}00'$  E along the said west line of the C. W. Egerly Survey, a distance of 245' to a reentrant corner of said survey;

Thence  $S67^{\circ}00'$  W, along the northern boundary line of said Survey a distance of 645' to a point which is at right angles to and 600' from Engrs. centerline Sta. 886/90;

Thence,  $N50^{\circ}23'$  E, parallel to and 600' from Engrs. centerline a distance of 750' to the place of beginning, containing 1.678 acres, more or less.

Parcel No. 3.

Beginning at a point which is at right angles to and 600' from Engrs. centerline of proposed U. S. Hwy. No. 181, said point also being on the southern boundary line of the C. W. Egerly Survey, Pat. 459, Abst. 111, and bears  $N87^{\circ}00'$  E 465' from the extreme southerly point of the peninsula;

Thence,  $N87^{\circ}00'$  E, along said southern boundary line a distance of 423.9' to a re-entrant corner of said survey;

Thence,  $S77^{\circ}00'$  E, along said southern boundary line a distance of 291.7' to a corner;

Thence,  $N77^{\circ}30'$  E along said southern boundary line, at 215' cross Engrs. centerline Sta. 899/50 and at 425' intersect the north right of way line of the Southern Pacific R. R.;

Thence, in a southwesterly direction following the alignment of the Southern Pacific's north right of way line, crossing Nueces Bay, a distance of 9,400', more or less, to the southern shoreline of Nueces Bay on North Beach in Corpus Christi;

Thence, in a northerly direction following the meanders of said shoreline to its intersection with the north line of Avenue "E" in Corpus Christi;

Thence,  $N31^{\circ}48'$  E, a distance of 700' more or less to a point which is at right angles to and 600' from Engrs. centerline Sta. 986/40.4;

Thence,  $N50^{\circ}23'$  E, parallel to and 600' from Engrs. centerline a distance of 8030' more or less, to the place of beginning, containing 199.526 acres, more or less;

Parcel No. 1 184.334 Acres

Parcel No. 2 1.778 Acres

Parcel No. 3 199.526 Acres

Total 385.638 Acres

The above described three parcels contain 385.638 Acres, more or less, and include all those submerged lands, reefs, and

tidewater flats within the above described boundaries.

[Acts 1947, 50th Leg., p. 162, ch. 101.]

**Art. 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County**

Sec. 1. In order that the expansion and improvement program of the State Highway Commission may be carried forward in an orderly and expeditious manner the title to and control of that certain narrow strip of land consisting of six (6) separate tracts or parcels and being 4.89 acres, more or less, owned by the State of Texas and the Texas State College for Women, are hereby transferred and conveyed to the Texas Highway Commission for the widening and material improvement of State Highway No. 24 in Denton County, Texas, from North Locust Street in the City of Denton easterly to the Denton-Collin County Line, as shown on the right-of-way map on file in the State Highway Department at Austin, Texas, and more particularly described as follows, to wit:

**Parcel No. 1.**

Lying between chaining station 0/27 and 14/73 on the centerline of State Highway No. 24, as located by the Resident Engineer of the State Highway Department, a plat of which is on file with the State Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point on the centerline of State Highway No. 24 chaining station 0/27, and the east line of North Locust Street in the City of Denton, 42.6 feet south of the southwest corner of the Chas. N. Davis Lot No. 1, H. V. Hennen Subdivision;

THENCE south with the east line of North Locust Street, 40 feet to a point 40 feet from at right angles to the centerline;

THENCE S89°42' east 40 feet from and parallel to the centerline, 623 feet to a point at right angles to chaining station 6/50;

THENCE S88°59' east 40 feet from and parallel to the centerline, 823 feet to a point in the west line of Bell Avenue, 78.1 feet south of the southeast corner of the F. B. Huey Lot 1, Henry King Addition and 40 feet south of chaining Station 14/73;

THENCE north with the west line of Bell Avenue to the south street line of Hennen Drive;

THENCE west with the south line of Hennen Drive, 1446 feet to the east line of North Locust Street;

THENCE south to the place of beginning, containing 1.30 acres of land, more or less.

**Parcel No. 2.**

Being a strip of land lying over and across the north side of Lot 7, original subdivision of the B.B.B. & C.R.R. Company, Survey, Scrip No. 111, situated in Denton County, Texas, left of chaining stations 15/22 to 22/83.5 of State Highway No. 24, as located by Resident Engineer of the State Highway Department, a plat of

which is on file with the State Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point in the north line of said Lot 7, and the east line of Bell Avenue in the City of Denton, 6 feet south of chaining station 15/22;

THENCE east with the north line of said Lot 7, 755 feet to the northeast corner of said Lot 7 and the center of Frame Street, 53.5 feet south of chaining station 22/83.5;

THENCE south with the center of Frame Street, 106.6 feet to a point;

THENCE northwesterly 131 feet to a point 60 feet from at right angles to the centerline;

THENCE westerly with a curve to the right whose radius is 3879.83 feet 60 feet from and concentric to the centerline 75 feet to a point at right angles to Station 21/00;

THENCE westerly 205 feet to a point 70 feet from at right angles to Station 19/00;

THENCE westerly with a curve to the right whose radius is 3889.83 feet, 70 feet from and concentric to the centerline 101.8 feet to a point at right angles to Station 18/00;

THENCE westerly 102 feet to a point 60 feet from at right angles to Station 17/00;

THENCE westerly with a curve to the right whose radius is 3879.83 feet, 60 feet from and concentric to the centerline, 49.0 feet to a point of tangency, at right angles to Station 16/51.7;

THENCE N88°59' west 60 feet from and parallel to the centerline 129.7 feet to the east line of Bell Avenue;

THENCE north 54 feet to the place of beginning, containing 0.91 acre of land, more or less.

**Parcel No. 3.**

Lying to the right of chaining station 22/83.5 on the centerline of State Highway No. 24, as located by the Resident Engineer of the State Highway Department, a plat of which is on file with the State Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point 53.5 feet south of chaining station 22/83.5, the northwest corner of the Texas State College for Women 38½ acre tract;

THENCE south with the west line of said tract 106.6 feet;

THENCE northeasterly 140 feet to a point in the north line of said tract;

THENCE west 89 feet to the place of beginning, containing 0.11 acre of land, more or less.

**Parcel No. 4.**

Lying between chaining station 22/83.5 and 24/38 on the centerline of State Highway No. 24, as located by the Resident Engineer of the State Highway Department, a plat of which is on file with the State

Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point on the centerline of State Highway No. 24, chaining station 22/83.5 and the west line of the Texas State College for Women 2 acre tract, 53.5 feet north of the southwest corner of said tract;

THENCE north with said west line 160.1 feet to a point;

THENCE southeasterly 127 feet to a point 60 feet from at right angles to the centerline;

THENCE northeasterly with a curve to the left whose radius is 3759.83 feet, 60 feet from and concentric to the centerline, 55 feet to a point in the east line of said tract;

THENCE south with said east line, 124.2 feet crossing the centerline at 62.1 feet station 24/38, to a point 60 feet from at right angles to the centerline;

THENCE southwesterly with a curve to the right whose radius is 3879.83 feet, 60 feet from and concentric to the centerline, 55 feet to a point;

THENCE southwesterly 14 feet to a point in the south line of said tract;

THENCE west 89 feet to the southwest corner of said tract;

THENCE north 53.5 feet to the place of beginning, containing 0.54 acres of land, more or less.

**Parcel No. 5.**

Lying between chaining stations 24/38.0 and 27/10 on the centerline of State Highway No. 24, as located by the Resident Engineer of the State Highway Department, a plat of which is on file with the State Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point on the centerline of State Highway No. 24, station 27/10 and the east line of the A. L. Logan 2.86 acre tract, 148 feet north of the southwest corner of said tract;

THENCE north along said east line, 62.8 feet to a point 60 feet from at right angles to the centerline;

THENCE southwesterly with a curve to the right, whose radius is 3759.8 feet, 60 feet from and concentric to the centerline, 270.0 feet to a point in the west line of said tract;

THENCE south along said west line 124.2 feet, crossing the centerline at 62.1 feet, Station 24/38, to a point 60 feet from at right angles to the centerline;

THENCE northwesterly with a curve to the left, whose radius is 3879.8 feet, 60 feet from and concentric to the centerline, 273.9 feet;

THENCE north 62.8 feet to the point of beginning, containing 0.75 acres of land, more or less.

**Parcel No. 6.**

Lying between chaining stations 27/10 and 31/72 on the centerline of State High-

way 24, as located by the Resident Engineer of the State Highway Department, a plat of which is on file with the State Highway Engineer at Austin, Texas, and the County Clerk of Denton County, Texas.

BEGINNING at a point on the centerline of State Highway No. 24 chaining station 27/10, and the west line of the Texas State College for Women 5 acre tract, 148 feet north of the southwest corner of said tract;

THENCE south with said west line, 62.8 feet to a point 60 feet from at right angles to the centerline;

THENCE northeasterly with a curve to the left whose radius is 3879.83 feet, 60 feet from and concentric to the centerline, 309.2 feet to a point of tangency at right angles to station 29/96.1;

THENCE N70°51' east 60 feet from and parallel to the centerline 151.6 feet to the east line of said tract;

THENCE north with said east line 137.6 feet, crossing the centerline at 63.5 feet, station 31/72, to a point 70 feet from at right angles to the centerline;

THENCE southwesterly 96.8 feet to a point 60 feet from at right angles to station 31/00;

THENCE S70°51' west 60 feet from and parallel to the centerline, 103.9 feet to a point of curve;

THENCE southwesterly with a curve to the right whose radius is 3759.83 feet, 60 feet from and concentric to the centerline, 263.6 feet to a point in the west line of said 5 acre tract;

THENCE south 62.8 feet to the place of beginning, containing 1.28 acres of land, more or less.

Sec. 2. The fact that the improvement and widening of State Highway No. 24 from a point on North Locust Street in the City of Denton easterly to the Denton-Collin County Line has been long delayed because of the inability of the State Highway Commission to obtain the right of way necessary for the widening and improvement of such Highway, creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[Acts 1947, 50th Leg., p. 268, ch. 164.]

**Art. 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County, Conveyance to State Highway Commission**

Sec. 1. In order that the State Highway Commission may have title to and control of the more or less submerged right of way necessary for the construction, reconstruction and maintenance of the Causeway and its Approaches across Cayo del Oso in Nueces County, as described in Section 2 of this Act, and as shown on the right-of-way map on file in the State Highway Department at Austin, Texas,

and entitled Project ARMR 5A(1) Control 617-1-1, State Highway No. 358, Nueces County, from U.S. Naval Air Base on Encinal Peninsula to Junction with State Highway No. 286, the State hereby conveys to the State Highway Commission title to and control of the submerged right-of-way described in Section 2 of this Act, and as shown on the right-of-way map above stated, but no part of this Act is to be construed so as to interfere nor conflict with the rights and authority of the State Game and Fish Commission, except that the State Highway Commission shall have the full right and authority to take and use, at any time and in any quantity desired, any and all materials within the limits of this tract, and is exempted from the payment of any and all materials taken therefrom; provided, however, that all mineral rights, together with the right to explore for and develop same by directional drilling are reserved to the State of Texas.

Sec. 2. The conveyance hereby made shall consist of a tract of more or less submerged land and tidewater flats, situated under the waters of Cayo del Oso between Engineers centerline Station 130 + 32.8 and Station 169 + 54.0 of State Highway No. 358, said tract being a strip of land 1000 feet wide, 500 feet on each side of the centerline of this right-of-way survey which extends from the Flour Bluff Naval Station to Junction with State Highway No. 286, 3.65 miles south of Corpus Christi, said tract extending for a distance of 3921.2 feet, the centerline being more particularly described as follows:

Beginning at the intersection of the centerline of State Highway No. 358 with the western edge of R. G. Chapman land which extends to the water's edge at mean sea level, same being a point on a 1 degree circular curve to the right at Engineers Station 130 + 32.8;

Thence along said 1 degree curve to the right for a distance of 250.0 feet to the P T of said curve at Station 132 + 82.8;

Thence N 60° 58' W, a distance of 3671.2 feet to the West water's edge at mean sea level of the Cayo del Oso, which is also the eastern boundary of lands owned by the United States of America, south of Engineer's centerline and by Joe W. Day, north of Engineer's centerline. Said tract herein described contains 90.018 acres, more or less, and includes all the submerged lands, reefs, and tidewater flats within the above described boundaries.

Sec. 3. The fact that this Causeway and its Approaches were constructed during World War II as an emergency project due to the urgent necessity for the development of a traffic-way to serve the Naval Air Base on Encinal Peninsula then under construction by the Government of the United States as a national defense establishment; and the fact that transfer of title to the submerged lands was overlooked and the State Highway Commission is without title to or control of the necessary right of way as de-

scribed in Section 2 of this Act, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House, and the Constitutional Rule that bills shall not take effect until ninety (90) days after the adjournment of the Legislature, be, and said Rules are hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[Acts 1957, 55th Leg., p. 16, ch. 12.]

**Art. 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation**

**Confirmation and Validation of Sale**

Sec. 1. The sale by the State of Texas to the City of Corpus Christi of 986.97 acres of land in Nueces County, known as Tract C, as shown on a map entitled Sheet No. 1, Laguna Madre, Subdivision for Mineral Development, dated November 1, 1948, and revised September 12, 1951, by addition of Cayo Del Oso Subdivision, which land is described by metes and bounds in that certain patent heretofore issued to said City, being Patent No. 158, Volume 29-B, dated June 11, 1959, is hereby in all things confirmed and validated so that all right, title and interest of the State of Texas in and to all of the land described in said patent, submerged and unsubmerged, shall be and is hereby relinquished, confirmed and granted unto the City of Corpus Christi, its successors and assigns, and such land shall be vested in the City of Corpus Christi subject only to the conditions, limitations and restrictions contained and imposed by the provisions of this Act, which shall entirely supersede the conditions and restrictions referred to in said patent.

**Reservation of Minerals and Mineral Rights to State for Permanent School Fund**

Sec. 2. All minerals and mineral rights in, on and under said land are hereby reserved unto the State of Texas for the use and benefit of the Permanent School Fund, provided, however, that in the event of discovery of oil or gas in said land, drilling operations thereon shall be restricted so that not more than one well productive of oil or gas shall be drilled for each one hundred sixty (160) productive acres, and all operations at each such well shall be confined to an area or areas of four (4) acres at and including the well site.

**Conflict of Claims or Boundaries**

Sec. 3. In the event of any conflict or claim of conflict between the boundaries of the tract of land described in such patent and the boundaries or claimed boundaries of previously validly titled land owned or claimed by private persons, the City of Corpus Christi is hereby authorized in its own behalf and as agent for the State of Texas to take proper action to resolve such conflict or claim of conflict, without cost or expense, however, to the State of Texas. Without limiting the authority of said City otherwise herein granted or which it has by reason of its ownership, said City is hereby autho-

rized to file suit in the name of the State of Texas to secure a judicial determination of said boundaries; and said City is further authorized to establish the boundaries between the tract covered by said patent and any adjoining private owner or claimant by agreement, which boundary agreement or agreements shall be set forth in writing and shall be effective when approved by ordinance of said City adopted for such purpose. In the event of any change in the boundaries of said tract as a result of judicial decree or by agreement in accordance herewith, corrected field notes of said tract shall be filed in the General Land Office and a corrected patent shall be issued to the City of Corpus Christi, its successors and assigns, subject to the provisions of this Act.

#### Improvement of Land; Title to Land

Sec. 4. The City of Corpus Christi, its agents or assigns shall improve such portions of the land covered by said patent or any corrected patent as such city, its agents or assigns, deems suitable and proper therefor. Such improvement shall consist of the raising or filling to a height of at least three (3) feet above the level of mean high tide, except for such part as may be devoted to channels, canals, or waterways. Title to any portion of such land (except that devoted to channels, canals, or waterways) that has not been so improved by filling to such height before July 1, 1977, shall revert to the State of Texas, and from and after that date neither said city nor its assigns shall have any right, title, claim, or interest to such portion which has not been so improved. No title shall revert, however, to the State of Texas as to any portion or portions which are filled to such height before July 1, 1977, including portions which are devoted to channels, canals, or waterways appurtenant to or used in connection with any portion so improved.

#### Powers of City to Convey or Retain Land; Other Powers

Sec. 5. Said city may retain all or any part of the land subject to this Act, and it may convey all or any part or parts of such land to others. As to each tract or parcel of land which the city conveys to another or others, each such conveyance or conveyances shall:

(A) Contain a condition subsequent, which shall provide that such grantee or grantees shall by the date specified in the conveyance, which date shall in no event be later than July 1, 1977, improve the particular tract or parcel of land included in such conveyance to the extent that it will be filled to a height of at least three (3) feet above mean high tide, except for such portions thereof as may be devoted to channels, canals, or waterways. If the date specified in the conveyance is a date prior to July 1, 1977, such condition subsequent shall provide that if said condition is breached, title to the tract or parcel of land covered by said conveyance that is

not so improved (except for such portions as may be devoted to channels, canals, or waterways) shall revert to the City of Corpus Christi, and the right of reentry retained by said city in the conveyance shall be immediately exercised; and said city may thereafter retain such portion or portions of such tract or parcel, or may convey such portion or portions in the same manner as provided above. If the date specified in the conveyance is July 1, 1977, such condition subsequent shall provide if said condition is breached, title to such portion or portions of the tract or parcel of land covered by said conveyance that are not so improved (except for such portions as may be devoted to channels, canals, or waterways) shall revert to the State of Texas;

(B) Provide that such portion or portions of the tract or parcel of land covered by the conveyance which have been so improved, including such portions thereof as may be devoted to channels, canals, or waterways appurtenant to or used in connection with any portion so improved, shall, upon the written application to the City of Corpus Christi describing the improved area and the area devoted to channels, canals, or waterways appurtenant or used in connection therewith, be by the city by ordinance or resolution released of the condition subsequent and a proper recordable release shall be executed and delivered. Any such ordinance or resolution of said city shall be binding upon all parties concerned, including the State of Texas, as to the making of the improvements in accordance herewith; provided, however, that in the event the City of Corpus Christi conveys or leases all or any part of said land to any other person, persons, firms, corporation or entity of any nature, said city shall pay to the Texas Permanent Free School Fund a sum equal to one-half ( $\frac{1}{2}$ ) of the reasonable market value thereof.

#### Plans and Contracts for Improvements; Powers of City

Sec. 6. The City of Corpus Christi is hereby authorized to prepare or approve plans for the improvements covered by this Act, and to make and enter into such agreements or contracts relating to such improvements as in the judgment of the governing body thereof may be necessary or desirable, and such agreements or contracts may be with grantees or prospective grantees of all or any portion of the land subject to this Act, or other parties.

#### Repealer

Sec. 7. The land subject to this Act, as identified in Section 1 hereof, shall henceforth be held subject to the provisions of this Act and all laws or parts of laws in conflict herewith are hereby repealed or modified to the extent of such conflict.

Law Cumulative

Sec. 8. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi. [Acts 1961, 57th Leg., p. 1089, ch. 489; Acts 1965, 59th Leg., p. 91, ch. 34, §§ 1, 2, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1414, ch. 392, §§ 1, 2, eff. May 26, 1971.]

Section 3 of the amendatory act of 1965 ratified and validated the boundaries of the tract as determined by judicial decree; section 4 repealed all conflicting laws and parts of laws and section 5 made the act cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

Sections 3 to 5 of the 1971 amendatory act provided:

"Sec. 3. All laws or parts of laws in conflict herewith are hereby repealed or modified to the extent of such conflict.

"Sec. 4. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end it is the declaration of the Legislature that the provisions of this Act are severable."

**Art. 5421l. Control of Certain Property in Austin Transferred to University Regents**

From and after the effective date of this Act the control and management of, and all rights, privileges, powers and duties in connection with the property owned by the State of Texas and located on the west side of Red River Street between East Nineteenth and Eighteenth Streets, being the East One-half (1/2) of Outlot No. Sixty-three (63), consisting of Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) of Division "E" of the City of Austin, Travis County, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas, and hereafter, the aforesaid property shall be used for the purposes and activities of The University of Texas.

[Acts 1947, 50th Leg., p. 472, ch. 272, § 1.]

**Art. 5421m. Veterans' Land Board**

**Constitutional Provision**

Sec. 1. [Section 1 of this Act recited the adoption of the amendment to Article 3 of the Constitution, adding § 49-b, relating to the Veterans' Land Board.]

**State Agency; Chairman and Administrator;  
Performance of Duties and  
Functions of Board**

Sec. 2. The Veterans' Land Board is hereby declared to be a State Agency for performing the governmental functions authorized in Section 49-b of Article III, as amended, of the Constitution of the State. The Commissioner of the General Land Office shall be Chairman of the Board and Administrator of the Veterans' Land Program, as provided by said Section 49-b of Article III as amended, and shall perform all duties and functions of the Board prescribed by law, except those prescribed in section 2(A) hereof, which shall be performed by the Veterans' Land Board as constituted.

**Powers and Duties of Board**

Sec. 2(A). The duties of the Veterans' Land Board as created by Article III, Section 49-b of the constitution as amended, shall be to authorize and execute negotiable bonds as provided by law; to provide by resolution for the use of the Veterans' Land Fund in such manner as to effectuate the intent of the constitution and of the law; to fix the interest rates as prescribed by law; to provide for the forfeiture of contracts of sale and purchase and the resale of forfeited land; to conduct such investigations as it may deem necessary; and to formulate such policies, rules and regulations as may be necessary, not in conflict with the provisions of the law, to insure the proper administration of the law and to carry out the intent and purposes thereof.

**Citizen Board Members; Bond**

Sec. 2(B). Each citizen Board member shall execute a bond payable to the state in the sum of Fifty Thousand Dollars (\$50,000.00) to be approved by the Governor and conditioned upon the faithful performance of his duties. The premiums on such bonds shall be paid out of the funds appropriated by the Legislature for the operation of the General Land Office.

**Citizen Board Members; Compensation;  
Travel Expenses**

Sec. 2(C). The compensation of each of the two citizen Board members shall be a salary at the rate of Three Thousand Six Hundred Dollars (\$3,600.00) per annum, plus travel expenses, effective when said citizen members have qualified under the bond prescribed in Section 2(B).

**Bond Issue**

Sec. 3. The Board, by appropriate action, is hereby authorized at one time, or from time to time, to provide by resolution for the issuance and sale of such negotiable bonds as have heretofore or may be hereafter authorized by the Constitution, the proceeds therefrom to become a part of the Veterans' Land Fund. At the option of the Board, said bonds may be issued in one or several installments. The bonds of each installment shall bear a rate or rates of interest as may be prescribed by the Board; but the "weighted average annual interest rate," as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds in each installment may not exceed four and one-half percent (4½%). The bonds shall be payable as prescribed by the Board; shall mature serially or otherwise and not later than forty (40) years from their date; provided, however, that any bonds previously issued shall mature in accordance with their provisions; shall be payable in such medium of payment as to both principal and interest as may be determined by the Board; and may be made redeemable before maturity, at the option of the Board, at such price or prices, and under such terms and conditions, as may be fixed by the Board in the resolution provid-

ing for the issuance and sale of the bonds. The Board shall determine the form of the bonds, including the forms of any interest coupon to be attached thereto, and shall fix the denomination or denominations of said bonds and the place or places of the payment of the principal and interest thereon. Said bonds shall be executed by and on behalf of the Veterans' Land Board as obligations of the State of Texas in the following manner: they shall be signed by the Chairman and Secretary respectively of the Board, and the seal of the Board shall be impressed thereon, and they shall be signed by the Governor of the State of Texas, and attested by the Secretary of State of the State of Texas with the seal of the State of Texas impressed thereon. The resolution authorizing the issuance of any installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals in lieu of manual signatures and manually impressed seals may be used in executing such bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the Chairman and Secretary of the Board. In the event any officer whose manual or facsimile signature appears on any bond, or whose facsimile signature shall appear on any coupon, shall cease to be such officer before the delivery of any bonds, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until such delivery had been made. Before any such bonds so issued are delivered to the purchasers, the record pertaining thereto shall have been examined by the Attorney General of Texas and said record and bonds shall be approved by him. After such approval, the bonds shall be registered in the office of the State Comptroller of Public Accounts of Texas. Such bonds having been approved by the Attorney General and registered in the Comptroller's Office shall be held, in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations of the State. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of their validity. The only defense which can be offered against the validity of such bonds shall be forgery or fraud. All bonds issued under the provisions of this Act shall have, and are hereby declared to have, all of the qualities and incidents of negotiable instruments under the laws of this State. The Board is fully authorized to provide for the replacement of any bond which becomes mutilated, lost or destroyed.

#### Refunding Bonds

Sec. 4. The Board is hereby authorized to provide by resolution for the issue of refunding bonds for the purposes of refunding any bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon. The issuance of such refund-

ing bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the Board in respect to the same, shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

#### Notice of Preferential Right to Purchase Bonds

Sec. 5. The preferential right of purchase of any such bonds when offered for sale given in the Constitution to the administrators of the various teacher retirement funds, the Permanent University Funds, and the Permanent Free School Fund shall be made known to the proper administrators of said funds by written notice thereof immediately after any of such bonds are offered for sale.

#### Call for Bids; Bids Accompanied by Exchange or Check

Sec. 6. When the Board shall have authorized the issuance of a series of said bonds and shall have determined to call for bids therefor, it shall be the duty of the Board to publish at least one (1) time not less than ten (10) days before the date of said sale an appropriate notice thereof. Such publication shall be made in a daily newspaper of general state-wide circulation which is published not less than seven (7) times weekly. Said notice shall also be published for such number of times as the Board may determine in one or more popularly recognized financial journals of general circulation.

The Board may at its option demand of bidders, other than the administrators of the state funds herein mentioned, that their bids be accompanied by exchange or bank cashier's check for such sum as it may consider adequate to be a forfeit guaranteeing the acceptance and payment for all bonds covered by such bids, and accepted by the Board.

#### Sale of Bonds; Prorating

Sec. 7. None of said bonds shall be sold for less than their face value with accrued interest from their date, and all of such bonds shall be sold after competitive bidding to the highest and best bidder, except in those cases where the administrators of the state's funds given priority exercise, within fifteen (15) days after notice thereof, their right of priority to take such bonds at the highest price bid by another. If two or more of said administrators desire to exercise their right to purchase said bonds, the Board shall pro-rate same to said administrators who desire to make said purchase.

#### Veterans' Land Fund

Sec. 8. The Veterans' Land Fund shall consist of any lands heretofore or hereafter purchased by the Board, until the sale price therefor, together with any interest and penalties due, have been received by the Board (although nothing herein shall be construed to prevent the Board from accepting full payment for a portion of any tract), and of the moneys



attributable to any bonds heretofore or hereafter issued and sold by the Board which moneys so attributable shall include but shall not be limited to the proceeds from the issuance and sale of such bonds; the moneys received from the sale or resale of any lands, or rights therein, purchased with such proceeds; the moneys received from the sale or resale of any lands, or rights therein, purchased with other moneys attributable to such bonds; the interest and penalties received from the sale or resale of such lands, or rights therein; the bonuses, income, rents, royalties, and any other pecuniary benefit received by the Board from any such lands; sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with his bid and accept and pay for such bonds or for the failure of any bidder for the purchase of any lands comprising a part of said Fund to comply with his bid and accept and pay for any such lands; and interest received from investments of any such moneys. All moneys comprising the Veterans' Land Fund shall be deposited in the State Treasury to the credit of the said Fund.

Payment of Principal and Interest; Retirement of Bonds;  
Deposit of Unexpended Moneys; Fiscal Agent;  
Appropriations; Legal Investments

Sec. 9. The principal and interest on the bonds heretofore and hereafter issued by the Board shall be paid out of the moneys of the Veterans' Land Fund in conformance with the Constitutional provisions authorizing such bonds; but the moneys of the Fund which are not immediately committed to the payment of principal and interest on such bonds, the purchase of lands as herein provided, or the payment of expenses as herein provided may be invested in bonds or obligations of the United States until such funds are needed for such purposes.

All moneys comprising a part of the Fund and not expended for the purposes herein provided shall be a part of the Fund until there are sufficient moneys therein to retire fully all of the bonds heretofore or hereafter issued and sold by the Board, at which time all such moneys remaining in the Fund, except such portion thereof as may be necessary to retire all such bonds which portion shall be set aside and retained in the Fund for the purpose of retiring all such bonds, shall be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. All moneys becoming a part of the Fund thereafter shall likewise be deposited to the credit of the General Revenue Fund.

When a Division of said Fund (each Division consisting of the moneys attributable to the bonds issued and sold pursuant to a single Constitutional authorization and the lands purchased therewith) contains sufficient moneys to retire all of the bonds secured by such Division, the moneys thereof, except such portion as may be needed to retire all of the bonds se-

cured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, may be used for the purpose of paying the principal and interest thereon, together with the expenses herein authorized, of any other bonds heretofore or hereafter issued and sold by the Board. Such use shall be a matter for the discretion and direction of the Board; but there may be no such use of any such moneys contrary to the rights of any holder of any of the bonds issued and sold by said Board or violative of any contract to which said Board is a party.

Said Board may, if it so desires, designate the Treasurer of this State as fiscal agent for the payment of principal of and interest on the bonds; if said Treasurer is so designated he shall act without compensation. Alternatively, the Board may employ a private fiscal agent to perform such services in which event adequate compensation shall be paid.

If said Board, at any time during the existence of said Veterans' Land Fund, shall determine that during the following biennium there will not be sufficient moneys in said Fund to pay principal of and/or interest on said bonds which will fall due during the said following biennium, the Legislature shall appropriate from the General Fund of the State sufficient moneys to meet such obligation, such appropriated moneys to be used for said purposes only if at the time said principal and/or interest actually fall due there are not sufficient moneys in the Veterans' Land Fund to pay same.

All bonds heretofore or hereafter issued pursuant to the provisions of Section 49-b of Article III of the Constitution and Statutes enacted to implement the provisions thereof shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and all other political subdivisions and public agencies of the State of Texas. Such bonds, when accompanied by all unmatured coupons appurtenant thereto, shall be lawful and sufficient security for said deposits in the amount of the par value of said bonds.

The Board is hereby authorized to use the moneys of the Veterans' Land Fund to purchase on the open market any of the bonds it has heretofore issued and sold or hereafter may issue and sell, upon the occurrence of which the debt represented by any such bonds so purchased shall be deemed cancelled. Any such bonds so purchased by the Board shall be mutilated, burned or otherwise destroyed by the State Treasurer, who shall certify such fact to the Board under the seal of his office, and no further interest thereon shall be paid.

Payment of Fees and Expenses

Sec. 9(A). The Board is hereby authorized to use the moneys of the Veterans' Land Fund

attributable to any bonds hereafter issued and sold for the purpose of paying legal fees and fees for financial advice necessary in the opinion of the Board to the sale of bonds hereafter issued and sold; the expense of publishing notice of sale of any installment of such bonds; the expense of printing such bonds; and the expenses of delivering such bonds, including but not limited to the costs of travel, lodging, and meals of any officers or employees of the Board, the State Comptroller, the State Treasurer, and the Attorney General necessary in the opinion of the Board to effectuate delivery of such bonds, and the cost of manually signing such bonds. The Board further is hereby authorized to use the moneys of the Veterans' Land Fund attributable to any bonds hereafter issued and sold to remunerate any agent employed by the Board to pay the principal or interest due on any such bonds. No moneys of any Division of the Veterans' Land Fund created prior to the effective date of this Amendment may be used for paying the expenses listed herein until there are sufficient moneys of such Division to retire all of the bonds secured by such Division, at which time all such moneys, except such portion thereof as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, shall be usable to pay such expenses as fully as the moneys attributable to any bonds hereafter issued and sold by the Board.

**Purchase of Lands; Retirement of Bonds  
and Payment of Interest**

Sec. 10. All moneys attributable to the bonds issued and sold pursuant to the Constitutional Amendment adopted on November 6, 1956, shall be credited to the Veterans' Land Fund and may, until December 1, 1965, be used for the purpose of purchasing additional lands situated in the State of Texas owned by the United States or any governmental agency thereof, owned by the Texas Prison System or any other governmental agency of the State of Texas, or owned by any person, firm, or corporation, to be sold as provided herein; provided, however, that so much of such moneys as may be necessary to pay interest on such bonds shall be set aside for that purpose. After December 1, 1965, all moneys attributable to such bonds shall be set aside for the retirement of such bonds and to pay interest thereon; and when there are sufficient moneys to retire all such bonds, all of such moneys then remaining or thereafter becoming a part of the Veterans' Land Fund shall be governed as elsewhere provided herein.

All of the moneys attributable to any series of bonds hereafter issued and sold by the Board (a "series of bonds" being all of the bonds issued and sold in a single transaction as a single installment of bonds) may be used for the purchase of lands, likewise situated and owned, to be sold as herein provided, for a period ending eight (8) years after the date of

sale of such series of bonds; provided, however, that so much of such moneys as may be necessary to pay interest on bonds hereafter issued and sold shall be set aside for that purpose in accordance with the resolution adopted by the Board authorizing the issuance and sale of such series of bonds. After such eight (8) year period, all of such moneys shall be set aside for the retirement of any bonds hereafter issued and sold and to pay interest thereon, together with any expenses as provided herein, in accordance with the resolution or resolutions authorizing the issuance and sale of such additional bonds, until there are sufficient moneys to retire all of the bonds hereafter issued and sold, at which time all such moneys then remaining a part of the Veterans' Land Fund and thereafter becoming a part of the Fund shall be governed as elsewhere provided herein.

**Appraisalment of Property; Report by Appraiser;  
Sworn Report of Seller**

Sec. 10(A). Before purchasing land under any of the provisions of this Act, the Board shall cause to be made an appraisalment of the property in order to determine its value. Any appraiser representing the Board shall be reasonably qualified to give competent appraisals of land. Such appraiser shall make a written report to the Board in affidavit form, duly sworn to before a Notary Public or other official authorized to administer oaths, showing the appraised value of the land, the names and addresses of any person contacted relative to the valuation of the land, that he has examined the records of the County Clerk's office relative to the amount paid by the vendor for such land, that he has checked past sales of adjacent lands to aid in determining valuation, and if the purchase is being made under Section 16 hereof, that he has met the veteran on the land and has explained the transaction as authorized by this Act to him in detail; except that when the veteran is in the active military service and is stationed overseas or in Alaska, Hawaii, or United States territories or possessions, or stationed aboard a ship with a mission outside the continental United States including Alaska, then his representative designated by him in writing may meet the Board appraiser on the land for the purposes expressed in this Section, and that neither the appraiser, nor any member of his family, has received any personal benefits from the transaction and does not expect to receive any future personal benefits from the transaction.

Before any land is purchased by the Board, whether it be under Section 10 or Section 16 hereof, the Board shall require that the seller execute a sworn report to the Board to include the following: (1) the date the seller purchased the land, (2) the amount the seller paid therefor if purchased subsequent to June 7, 1949, (3) from whom the seller purchased the land, (4) the improvements made on the land since the seller purchased it and the cost thereof; and if the purchase is being made un-

der Section 16 hereof, the following must be included in addition thereto: (5) whether the seller by any manner or method is making the down payment to the Board on behalf of the veteran, (6) whether there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid, (7) whether there is an agreement or contract of any nature to transfer, sell, or convey at any time in the future between the seller and the veteran.

**Price of Land; Payment; Title**

Sec. 11. All land purchased by the Board shall be acquired at the lowest price obtainable, in the opinion of said Board, taking into consideration the quality, location, natural advantages and improvements of such land, and shall be paid for in cash and shall be clear of all liens and shall constitute a part of the Veterans Land Fund. It shall be the duty of the Board, before making payment for any land, to have the title of the property sought to be bought, examined, and may require for this purpose an abstract of title or a policy of title insurance, and may refer the same to the Attorney General for his examination and opinion. The Board may purchase lands which are subject to outstanding mineral leases or with all or a part of the mineral interests being outstanding, provided the title be otherwise good and marketable.

**Subdivision of Land; Purchase and Sale; Payment of Costs; Rules and Regulations for Sale of Lands**

Sec. 12. Land acquired by the Board may be subdivided for the purpose of sale as provided herein into tracts of such size as the Board may deem advisable; and, with respect to land acquired with the moneys of the Veterans' Land Fund attributable to any bonds hereafter issued and sold, the Board is hereby authorized to use the moneys of the Veterans' Land Fund attributable to the bonds hereafter issued and sold for the purpose of paying the expenses of surveying and monumenting such land and the tracts thereof; the cost of constructing roads thereon; any legal fees, recordation fees, and advertising costs arising out of the purchase and sale or resale of such land and the tracts thereof; and other like costs necessary or incidental to the purchase and sale of any lands so acquired by the Board; but such expenses shall be added to the price of such lands when sold or resold by the Board. No moneys of any Division of the Veterans' Land Fund created prior to the effective date of this Act may be used for paying the expenses listed herein until there are sufficient moneys of such Division to retire all of the bonds secured by such Division, at which time all such moneys, except such portion thereof as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, shall be usable to pay such expenses as fully as

the moneys attributable to any bonds hereafter issued and sold by the Board.

Land acquired and subdivided pursuant to this section shall be offered for sale in accordance with such rules and regulations as the Board may adopt and shall be sold by the Board to veterans qualified to participate in the Veterans' Land Program in conformance with the provisions of this Act governing the sale of lands purchased by the Board generally; but no tract may be sold under the provisions of this Section for a price, to include any addition of the expenses above mentioned, in excess of \$10,000.00 unless the purchaser pays in cash as a down payment the amount of the sale price in excess thereof in accordance with the Board's rules and regulations but by not later than the date of sale, in addition to the initial payment required by Section 17 of this Act. In the event that a sale hereunder is not consummated, any down payment received shall be refunded to the veteran.

The foregoing notwithstanding, any land acquired and subdivided pursuant to this Section which has first been offered for sale to veterans and which has not been sold to such purchasers may be sold to any purchaser in the same manner as lands forfeited under the provisions of this Act.

**Selling Price; Amount Which Veteran may Purchase**

Sec. 13. Land shall not be sold at less than its actual cost to the Board, except that forfeited lands may be resold under the provisions of Section 19(A) hereof at less than its actual cost to the Board. No veteran shall be permitted to purchase more than one (1) tract of land under this Act.

**Veteran Defined**

Sec. 14. The term "veteran" as used in this Act, and the phrase "Texas veterans of the present war or wars, commonly known as World War II," and the phrase "Texas veterans of service in the armed forces of the United States of America subsequent to 1945," as used in Section 49-b of Article III of the Constitution, or as same may be amended, shall be synonymous and shall be construed for the purpose of this Act to mean any citizen of the United States, male or female, over eighteen (18) years of age, who served not less than ninety (90) consecutive days, unless sooner discharged because of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States after September 16, 1940 and who upon the date of filing his or her application has not been dishonorably discharged from the branch of the service in which he or she served, and who at the time of his or her enlistment, induction, commission or drafting was a bona fide resident of this State, and who at the time of seeking the benefits of this Act is a bona fide resident of the State of Texas; or who has resided in Texas for at least five (5) years immediately prior to the date of filing his or her application, provided that in the

event of the death of an eligible Texas veteran after the veteran has filed with the Board an application and contract of sale to purchase through the Board the tract selected by him or her and before the purchase has been completed, then the surviving spouse may complete the transaction.

**Local Committees to Pass on Veterans' Qualifications; Inquiries and Investigations**

Sec. 15. There shall be appointed by the Commissioners Court of each county in this State a committee to be composed of three (3) residents of that county, all of whom shall be real property owners in said county. Any person deeming himself a veteran as defined herewith, and desiring to benefit hereunder, shall submit to such committee such forms as may be prescribed by the Board, and before he submits his application of purchase and sales contract to the Board, which the committee will consider and then submit a report to the Board concerning the financial responsibility of the veteran, if such is known, a statement as to whether or not in their opinion the transaction is bona fide, and a statement from them as to what they consider is the reasonable value of the land in question. Provided, however, that when the veteran is a resident of one (1) county and is seeking to purchase land situated in another county, he shall submit such forms to the local committees of both such counties. The Board shall also be supplied with a statement as to the credit rating of the veteran applicant. The Board may make such other inquiries and investigation as it deems proper, in order to determine the veteran's eligibility and qualifications, and if the Board determines from the information submitted, or from its own inquiries and investigation, that the financial responsibility of the veteran is such as to leave a reasonable doubt as to his ability to carry the contract through to completion and make all payments thereon, the Board shall reject his application; provided further that the provisions of this section shall not, unless the Board desires, be applicable to sales under Section 12 and Section 19(A) of this Act.

**Purchase of Land Selected by Veteran**

Sec. 16. Anything contained in this Act to the contrary notwithstanding, it is expressly provided that where the veteran desires a particular tract of land located in this State, containing not less than ten (10) acres, he may, upon proper showing of eligibility to benefits hereunder, be authorized by the Board to select the land which he desires and submit his selection to such Board on such form as it may prescribe. The Board may purchase such land from the owner thereof upon the terms agreed, if the Board is satisfied of the value and desirability of the property submitted, and pay not to exceed Ten Thousand Dollars (\$10,000.00) therefor unless the veteran pays to the Board in cash that portion of the price in excess of the amount that the Board agrees to pay in accordance with the Board's rules and regula-

tions but by not later than the date on which the Board acquires title thereto. Any such cash payment shall be considered a down payment on the price of the land when sold by the Board to a veteran selecting same and shall be in addition to the initial payment required by Section 17 of this Act. The Board shall cause to be made such appraisement of the property as it deems necessary in order to determine value, and before consummating a purchase shall satisfy itself as to title as provided in Section 11 of this Act. No transaction under this Act shall be considered together with any other transaction so as to constitute a block deal between the State and two or more veteran purchasers, and each tract of land shall be considered as a wholly separate entity without dependence upon any other tract of land, substance, matter, person or thing in determining its value, purchase or sale, under any of the provisions of this Act; provided, however, that nothing in this Act shall be construed so as to prevent the purchase and/or sale of contiguous tracts of land to separate purchasers so long as the value of the land is determined in the above manner. The property so acquired shall become a part of the Veterans' Land Fund, but the veteran who has selected the land so acquired shall have a preference right to purchase the same from the Board. The rules and regulations governing the sale of land under this section shall be governed by the provisions hereinafter made with reference to sale of land generally by the Board, except where same conflicts with this section. In order to be entitled to such preference right, the veteran shall, before the Board purchases said land, have agreed in writing to purchase said selected land from the Board for the price paid therefor; but if the veteran fails or refuses to exercise such preference right, the land may be sold by the Board in the same manner as provided for the sale of land forfeited under the provisions of this Act. If the title to said land is not approved and accepted by the Board, any amount paid to the Board in excess of the amount which the Board agreed to pay for such selected land shall be refunded to the veteran together with any other down payment remitted to the Board. In so far as practical, all applications shall be processed in the order in which they are received by the Board.

**Insurance on Improvements Carried by Veteran Purchaser**

Sec. 16(A). Each veteran purchaser shall carry such insurance on the improvements on the property under contract of purchase under this Act as the Board may deem necessary and failure to do so will subject his contract to forfeiture under the provisions of Section 19 hereof. The Board is authorized to promulgate such rules and regulations it deems necessary in the enforcement of this provision and if the Board so desires, it may require each veteran applicant subject to this provision to make additional semiannual payments to be held in trust for the payment of premiums that may become due and unpaid on any contracted in-

insurance covering such improvements. If the Board requires such payments to be made, they shall be deposited in a trust fund with the State Treasurer and shall be used for the purpose of making such premium payments. Any unused balance of each veteran's deposit shall be held by the Board until such time as the maintenance of such account becomes unnecessary at which time such funds shall be refunded to the veteran.

Group Life Insurance Coverage Cancelling  
Indebtedness of Purchasers

Sec. 16(B). The Board may enter into a master contract or agreement with one or more life insurance companies authorized to do business in Texas to provide group life insurance coverage cancelling upon death the indebtedness due the Board of persons purchasing land under the Texas Veterans Land Program. Such contract shall not prohibit cancellation by the insurer of the entire contract upon reasonable notice to the Board but shall prohibit cancellation of individual coverage except as hereinafter expressly authorized. The master contract or agreement shall provide, in addition to those provisions of Article 3.50 of the Insurance Code of the State of Texas, that the life insurance coverage will be offered by the writing insurance company or companies to all such persons without a physical examination and that no such person shall be denied coverage because he is disabled at the time of application for such coverage. The policy contract shall express and control the contractual relationship between all parties thereto and shall be approved by the State Board of Insurance in accordance with the provisions of the Insurance Code of Texas, as amended. It shall not be mandatory that any person purchasing land under the Texas Veterans Land Program accept the offer of such coverage, and refusal by such person to accept the offer of such coverage shall not be a ground for the Board to decline to enter into a contract of sale and purchase with any such person. Such coverage shall be terminated as to any person of the group upon: (1) the satisfaction of the indebtedness due the Board; or (2) upon the Board's approval of a transfer of interest in the land being purchased from the Board; or (3) upon failure to make timely payment of the premium to be paid for such coverage; such master contract may provide that coverage will terminate upon the person purchasing land under the Texas Veterans Land Program attaining the age of sixty-five (65) years. When coverage has been terminated as to any member of the group for failure to make timely payment of the premium, renewal of coverage shall be subject to evidence of insurability as required by and satisfactory to the insurance company and upon payment of the premium due plus any penalty that may be provided. The total insurance coverage as to any person of the group shall not at any time exceed the indebtedness due the Board, but in no event shall such total insurance coverage exceed Ten Thousand Dol-

lars (\$10,000). The Board may collect, or provide for the collection of, the premium for such coverage in any reasonable manner. If the death of a person of the group occurs while the insurance coverage is in force, the benefits of such coverage shall be paid to the Veterans Land Board for credit to the Veterans Land Fund and shall cancel the indebtedness due the Board.

The following words and phrases shall for the purposes of Section 16(B) of this Act have the meaning indicated:

a. "Persons purchasing land under the Texas Veterans Land Program" shall mean any person or persons, and his or their successors or assigns, who are buying land from the Veterans Land Board under contract of sale and purchase, whether such land has been sold by the Board under Section 12, Section 16, or Section 19(A) of this Act.

b. "Person of the group" shall mean any person purchasing land under the Texas Veterans Land Program, as defined above, who has elected to accept the offer of the insurance coverage provided for in Section 16(B) of this Act.

c. "The indebtedness due the Board" shall mean the principal and interest thereon necessary to pay in full the obligation set forth in any contract of sale and purchase under which any person of the group, as defined above, is purchasing land from the Veterans Land Board, exclusive of delinquent principal, interest, and penalties.

Contract of Sale; Payment; Transfer; Deed

Sec. 17. The sale of all lands hereunder by the Board may be properly initiated by Contract of Sale and Purchase, and said contract shall be recorded in the deed records in the County where the land is located. The purchaser shall make an initial payment of at least five percent (5%) of the selling price of the land if sold pursuant to Section 12 of this Act or at least five percent (5%) of the amount that the Board agrees to pay for the land if sold pursuant to Section 16 of this Act, in neither event to exceed five percent (5%) of Ten Thousand Dollars (\$10,000.00) together with any additional down payment as provided in said Sections 12 and 16. The balance of said selling price shall be amortized over a period to be fixed by the Board, but not exceeding forty (40) years, together with interest thereon at a rate to be fixed by the Board; not to exceed one and one-half percent (1½%) per annum more than the accepted bid price for each series within a bond sale division; provided, however, that the purchaser shall have the right on any installment date to pay any or all installments still remaining unpaid; provided further, that in any individual case, the Board may, for good cause, postpone from time to time, upon such terms as the Board may deem proper, the payment of the whole or any

part of any installment of the selling price or interest thereon. The Board is empowered in each individual case to specify the terms of the contract entered into with the purchaser, not contrary to the provisions of this Act, but no property sold under the provisions of this Act shall be transferred, sold, or conveyed in whole or in part, until the original veteran purchaser has enjoyed possession for a period of three (3) years from the date of purchase of said property, and complied with all the terms and conditions of this Act and the rules and regulations of the Board; provided, however, that should the veteran purchaser die or become financially incapacitated, or in the event of an involuntary transfer by court order or proceedings such as, but not limited to, bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of said three (3) years by said purchaser or his heirs, administrators, or executors by complying with the rules and regulations promulgated by the Board and by securing the approval of the Board. After said three year period, a purchaser may at any time, transfer, sell or convey land purchased under the provisions of this Act, provided all mature interest, principal and taxes have been paid and the terms and conditions of this Act and the rules and regulations of the Board have been met and the approval of the Board obtained; provided, however, if the sale is to other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the Board to be fixed by the Board at not less than one percent (1%) per annum greater than the rate fixed by the Board for sales to veterans under Sections 12 and 16 of this Act as of the date on which such transfer, sale or conveyance is approved, except that when the purchase contract is awarded in a divorce action or incident to a written separation agreement the interest rate shall not change; provided, further, that property sold under the provisions of this Act may be transferred, sold or conveyed at any time after the entire indebtedness due the Board has been paid. No land purchased under the provisions of this Act may be leased by the purchaser for any term exceeding ten (10) years except for oil, gas or other minerals and so long thereafter as any minerals may be produced therefrom in commercial quantities, and no such lease shall contain any provision for option of any character or renewal of such lease or re-lease of such property for any term. The taking of any option of any character, renewal or re-lease agreement in a separate instrument to take effect in the future is prohibited; and any such lease or instrument containing such an option of any character, renewal or re-lease agreement executed after the effective date of this Act in violation hereof is expressly declared to be void. When the entire indebtedness due the State under the contract of sale is paid, the Chairman of the Board shall execute a deed under seal to the original purchaser of

the land or to the last assignee whose assignment has been approved by the Board. Nothing herein, however, shall be construed to prohibit the Board from accepting full payment for a portion of a tract and issuing a deed thereto, in accordance with its rules and regulations; and all deeds issued by the Board and executed by the Chairman thereof under seal, whether conveying all the land contracted to be sold to a veteran or other purchaser or a part of such land, are hereby ratified, confirmed, and validated. If a deed is executed to other than the legal owner or to a deceased grantee, such deed and the rights conveyed therein shall nevertheless inure to the benefit of the lawful owner.

#### Oil, Gas and Mineral Leases

Sec. 18. If at any time, while the veteran is indebted to the Board for the land purchased, he should execute, or there is in existence a lease or contract of sale of oil, gas, or any other mineral, chemical, or hard metal, or a lease or contract of sale of any timber, sand, gravel, or other materials, covering such land, or any part thereof, the removal of which would deplete the corpus of the tract; at least one-half ( $\frac{1}{2}$ ) of all bonus money, delay rentals, and royalties received as consideration for, or payment under such oil, gas and mineral lease, and at least one-half ( $\frac{1}{2}$ ) of all moneys received under any such lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials, or so much thereof as may be required, shall be paid to the Board by the owner of such lease or contract of sale and applied by it toward the satisfaction of said indebtedness; provided, further, that no oil, gas or mineral lease shall be for a primary term exceeding ten (10) years and the lease may provide that it shall remain in force as long thereafter as production is obtained in paying quantities.

#### Forfeiture of Contracts

Sec. 19. If any portion of the interest or principal on any sale shall not be paid when due, or if any other provisions of this Act, the contract, and Board rules and regulations are not complied with, the contract of sale and purchase shall be subject to forfeiture by the Board upon thirty (30) days written notice to the original purchaser and his vendees. Such notice shall give the reason or reasons why the contract or sale and purchase is subject to forfeiture and shall be sufficient when given by registered mail to the last known address of the original purchaser and his vendees. If such reason or reasons for forfeiture are cured or corrected within said thirty-day period, the Board shall not enter an order of forfeiture. Such forfeiture shall be effective when the Board shall have met and adopted a resolution directing the Chairman of the Board to endorse upon the wrapper containing the papers of said sale, or upon the purchase contract filed in the Land Office, the word "forfeited," or words of similar import, with the date of such action,

and to sign officially; thereupon the lands and all payments theretofore made shall become forfeited. Upon forfeiture full title to the land, including both the surface and mineral estates, shall revert in the Board, and the Board shall recognize and continue in force and effect any outstanding valid oil, gas or mineral lease and collect all rentals, royalties, or other amounts payable thereunder. A notice of the action of the Board in forfeiting the original contract shall be mailed to the County Clerk of the county wherein the land is located, and the said Clerk shall enter on the margin of the page or pages containing the record of the original contract a notation of such forfeiture. Land included in such forfeited contract shall be subject to resale under the terms as set forth in Section 19(A) hereof. In any case where the sale has been forfeited and the title to the lands reverted in the Veterans' Land Fund, the original purchaser or his vendee shall have the right to reinstate his purchase contract at any time prior to the date on which the Board shall have met and ordered the said lands to be advertised for resale, or for lease for mineral development, but not thereafter. Any person exercising a right of reinstatement shall pay all delinquent installments, penalties and costs incident to the reinstatement, as shall be prescribed by the said Board. All interest and principal which shall become delinquent shall bear interest at the rate to be fixed by the Board from time to time but not to exceed ten per cent (10%) per annum from the date the same becomes delinquent, until paid.

The Board, acting by and through the Attorney General, is hereby directed to institute such legal proceedings as may be necessary to enforce such forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties as may be due the Board at the time such forfeiture occurred, or to protect any other right to such land. The liability of the original veteran purchaser and any subsequent assignee or assignees of such veteran shall be joint and several, but the original veteran purchaser shall be primarily liable for payment of any and all moneys under the original contract of sale and purchase.

In any action brought in the courts against the State, after obtaining permission of the Legislature, involving the title to any tract of land to which the State has a warranty deed, the State shall have the right to plead all statutes of limitations in the General Laws of this State. This shall not be considered as a limitation to any other defense the State might have.

**Resale of Forfeited Land; Forfeiture of Successful Bidder's Deposit**

Sec. 19(A). The resale of land which has been forfeited under the provisions of this Act may be made to the highest bidder; provided, however, that sales shall be made to qualified purchasers as provided for in Article III, Section 49b of the Constitution of the State of

Texas and under terms and conditions and at such time and in such manner as the Board may prescribe in its rules and regulations, any provisions of this Act to the contrary notwithstanding, and the Board shall have the right to reject any and all bids. If the successful bidder refuses to execute a contract of sale and purchase, all moneys submitted with his bid shall be forfeited and deposited in the State Treasury and credited to the Veterans' Land Board Special Fund.

**Heirs, devisees and Personal Representatives**

Sec. 20. If the purchaser dies indebted to the Board under contracted purchase, his rights acquired under this Act and such contract shall devolve upon his heirs, devisees or personal representatives, pursuant to the laws of the State of Texas, but subject to all rights, claims and charges of the Board. Default on the part of such heir, devisee or personal representative with respect to any right, claim or charge of the Board shall have the same effect as would default on the part of the purchaser, but for his death.

**Rules and Regulations; Forms; Forfeitures; Fees for Processing and Servicing Applications**

Sec. 21. The Board is hereby authorized and empowered to make and promulgate such rules and regulations under this Act, and not inconsistent herewith, as it shall deem to be necessary or advisable. Such rules and regulations shall be considered a part of this Act and any violation thereof shall subject the offender to prosecution under the provisions of Section 32 hereof. The Board shall likewise have the power to prescribe the form and contents of all notices, bids, applications, awards, contracts, deeds or instruments whatsoever in any manner used by it in so carrying out such project and plan when the same shall not be in conflict with the law. The Board is hereby made the sole judge of forfeiture of any purchase contract under this Act, and anyone availing himself of the provisions of this Act shall by so doing agree to abide by the same; and should the Board declare a forfeiture under said purchase contract, then the purchaser shall vacate the premises within forty-five (45) days after the date of letter giving notice of such declaration, such letter to be forwarded by registered mail to the last known address of such purchaser.

The Board is hereby authorized and required to collect a fee in the amount they feel necessary from each applicant under Section 16 of this Act and to deposit such fees in a bank and any and all interest received thereon shall be credited to Veterans' Land Board Special Fee Fund 52, and shall be expended for administrative purposes, and to collect a fee of Thirty-five Dollars (\$35) from each successful bidder under Section 19(A) of this Act, which fees shall be held in a trust fund to be used for the purpose of payment for examination of title, recording fees and/or other expenses; and any unused balance remaining after payment for

such items shall be refunded except as provided in Section 19(A) of this Act.

The Board is further authorized and required to charge and collect for the use of the State the following fees for the processing and servicing of purchase applications and Contracts of Sale and Purchase and matters incidental thereto. Any such fees, or a portion thereof, which in the opinion of the Board are unused shall be refunded.

1. Fee for each appraisal for each application under Section 16 of this Act \$35.00
2. Contract of Sale and Purchase transfer fee for each transfer \$35.00
3. Mineral lease service fee for each lease executed by purchasers \$10.00
4. Reappraisal fee when required by the Board \$35.00
5. Fee for each loan of abstract \$10.00
6. Fee for servicing and filing each easement \$10.00
7. Service fee for each Contract of Sale and Purchase \$35.00
8. Fee for homesite, severance, or paid-in-full deed \$20.00

All moneys received by payment of the above fees and not refunded shall be deposited in the State Treasury and credited to the Veterans' Land Board Special Fund and shall be expended as provided in the biennial appropriation bill.

**Investigations by Board; Subpoenas Duces Tecum; Forfeiture and Cancellation of Permit or Charter; Fraud**

Sec. 21(A). The Board is hereby authorized to make any investigation it deems necessary relating to any transactions involving land purchases or sales under this Act with specific authority to administer oaths, to examine any books, records, or other documents dealing with or relating to such transactions, of any person, firm, corporation, or association involved in the transaction, and to make such copies thereof as in its judgment may show or tend to show fraud upon the Board or veteran, or any violation or attempted violation of this Act; the Board is further authorized to issue subpoena duces tecum requiring such persons, firms, corporations or associations to produce any books, records, or any other documents to the Board for examination. If any corporation shall fail or refuse to comply with the orders of the Board under this Section, such corporation shall thereby forfeit its right to do business in this State, and its permit or charter shall be canceled or forfeited by the Attorney General. Such failure or refusal by any person, firm, corporation, or association, shall be presumed to be prima-facie evidence of fraud upon the Board and veteran in violation of this Act by such person, firm, corporation or association, and such person, firm, corporation or association shall lose and forfeit all its rights and benefits under this Act.

**Leases by Board**

Sec. 22. The Board shall have the power and authority to lease any property which it owns, upon such terms as it may deem proper; providing said lease, as to agricultural and grazing purposes, shall be subject to cancellation upon the sale of said property to any veteran. The Board is authorized and empowered to execute oil, gas, and mineral leases upon any of the land which it may purchase, prior to the sale thereof, by following the same procedure as provided for the School Land Board on leases of Public School Lands.

**Land Unsold on December 1, 1959**

Sec. 23. Any lands of the Fund remaining unsold on December 1, 1959, may be sold to anyone in such manner, at such price, and upon such terms as at said time shall be prescribed by law.

**Supplies for Board**

Sec. 24. The Board is hereby specifically authorized to purchase through the State Board of Control any and all supplies including, but not by way of limitation, stationery, stamps, printing, record books, and such other things as may be needed, at State expense, in order to carry on its functions as a State agency in the performance of the duties herein imposed upon it. The Board shall cause to be published pamphlets containing the provisions of this Act and any rules and regulations the Board desires, to be made available to any interested veteran, veteran's organization, or other interested persons in this State.

**Meetings of Board; Secretaries; Seal; Employees**

Sec. 25. The Board shall meet, when necessary, on the first and third Tuesdays of each month in the General Land Office, where its sessions shall be held and continue until its docket is cleared, subject to recesses at the discretion of the Board. The Chairman of the Board may call a special meeting of same at any time he thinks necessary, by giving the other members notice thereof. Minutes of each meeting of the Board shall be kept, and only those matters that actually transpire at the meeting shall be entered thereon. The Board shall select an Executive Secretary and an Assistant Executive Secretary, each of whom shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board, who shall perform all duties required of them by said Board.

The Board shall procure and adopt a seal bearing the words "Veterans Land Board" encircled by the oak and olive branches, common to other official seals. The Commissioner of the General Land Office is authorized to employ all other employees which may be necessary for the discharge of the duties of the Board, such as stenographers, typists, bookkeepers, surveyors, appraisers, and any and all other employees, in such number and for such time as may be necessary to the performance of their duties. The employees of the Board shall



be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board. All papers, records, and archives of the Board shall be deposited and kept in the General Land Office.

The provisions of the Veterans Land Act shall apply to the successors, if any, of the Veterans Land Board.

#### Compensation and Duties of Employees

Sec. 26. All employees of the Board shall be paid compensation until the effective date of the next general Departmental Appropriation Act covering the Veterans' Land Board shall become effective, at a rate comparable with the rate being paid by the state to other state employees doing the same type of work. All such employees shall be paid their compensation and perform their duties with the same rules, requirements, and regulations of the general law governing the state employees in such respects.

#### Sec. 27. [Appropriation]

##### Partial Invalidity

Sec. 28. If any section, provision, or part whatsoever of this Act should be held to be void, as in violation of the Constitution, it shall not affect the validity of the remaining portions thereof; it being the express intention that the Legislature would have passed the Act without the presence of the section or part thereof held to be invalid.

#### Sec. 29. [Effective date]

##### Bonds Exempt From Taxation

Sec. 30. Bonds heretofore and hereafter issued pursuant to the provisions of Section 49-b of Article III of the Constitution as same may be amended, and Statutes enacted to implement said provision of the Constitution, shall be exempt from every character and kind of taxation by the State of Texas, cities, towns, villages, counties, school districts, and all other political sub-divisions, and public agencies of the State of Texas.

##### Validation of Acts, Covenants and Accounts

Sec. 31. All actions heretofore taken by the Board under the provisions of Section 49-b of Article III of the Constitution and Chapter 318, Acts of the Regular Session of the 51st Legislature; all bonds heretofore issued by the Board; all covenants contained in resolutions authorizing the issuance of bonds; and all reserve accounts authorized to be set up in resolutions authorizing the issuance of such bonds are hereby validated.

##### False or Forged Documents; Defrauding Veteran; Punishment

Sec. 32. (a) Any person, seller, veteran or appraiser, who shall knowingly make, utter, publish, pass or use any false, fictitious, or forged paper, document, contract, affidavit, ap-

plication, assignment, or other instrument in writing, in connection with or pertaining to any transaction under this Act, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

(b) Any person who shall knowingly file any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or any other instrument in writing, pertaining to the purchase, sale, or resale of lands under this Act, shall be guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

(c) Whoever shall defraud any veteran of his rights and benefits under the provisions of this Act, by any act of fraud, duress, deceit, coercion, or misrepresentation, or whoever shall use the purposes or provisions of this Act to defraud the State or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, shall be guilty of a felony, and upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than two (2), nor more than ten (10) years, or by fine of not less than One Thousand Dollars (\$1,000), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and imprisonment.

[Acts 1949, 51st Leg., p. 592, ch. 318; Acts 1951, 52nd Leg., p. 550, ch. 324, §§ 1 to 11; Acts 1953, 53rd Leg., p. 484, ch. 170, § 1; Acts 1955, 54th Leg., p. 1597, ch. 520, §§ 1 to 13; Acts 1957, 55th Leg., p. 12, ch. 10, §§ 1, 2; Acts 1957, 55th Leg., p. 491, ch. 238, §§ 1 to 9; Acts 1957, 55th Leg., 2nd C.S., p. 159, ch. 5, § 1; Acts 1961, 57th Leg., p. 572, ch. 269, §§ 1 to 3; Acts 1962, 57th Leg., 3rd C.S., p. 134, ch. 45, § 1; Acts 1963, 58th Leg., p. 331, ch. 126, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 269, ch. 129, §§ 1 to 9, eff. Nov. 11, 1967; Acts 1973, 63rd Leg., p. 1690, ch. 615, §§ 1 to 6, eff. June 15, 1973.]

Amendment of this article by Acts 1963, 58th Leg., p. 1155, ch. 450, was conditioned upon adoption of amendment to Const. art. 3, § 49-b, proposed by S.J.R. No. 16, Acts 1963, 58th Leg., p. 1800, voted on at election held on Nov. 9, 1963. The proposed constitutional amendment was rejected by the voters and therefore Acts 1963, 58th Leg., p. 1155, ch. 450 did not become effective or operative as a law.

Amendment of this article by Acts 1965, 59th Leg., p. 128, ch. 52 was conditioned upon adoption of amendment to Const. art. 3, § 49b, proposed by H.J.R. No. 5, Acts 1965, 59th Leg., p. 2211, voted on at election held on Nov. 2, 1965. The proposed constitutional amendment was rejected by the voters and therefore Acts 1965, 59th Leg., p. 128, ch. 52 did not become effective or operative as a law.

Amendment of sections 3, 8 to 10, 12, 16, 17, 21 and addition of section 9(A) to this article by Acts 1967, 60th Leg., p. 269, ch. 129 to become effective and operative as a law, was conditioned upon adoption by the electors of amendment to Const. art. 3, § 49-b, proposed by H.J.R. No. 17 of Acts 1967, 60th Leg., p. 2983. The proposed constitutional amendment was voted on at election held

Nov. 11, 1967, and was approved by the electors. Sections 10 to 12 of the 1967 act provided:

"Sec. 10. The provisions herein shall be cumulative of all other laws not in conflict herewith; but where a conflict exists, the provisions hereof shall be controlling.

"Sec. 11. If any provision herein or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 12. This Act shall become effective and operative as a law only upon the condition that the Constitutional Amendment to Section 49-b, Article III of the Constitution of Texas, which is proposed by House Joint Resolution No. 17 of the Sixtieth Legislature, 1967, or as proposed by Senate Joint Resolution No. 7 of the Sixtieth Legislature, 1967, shall be adopted and become a part of the Constitution of Texas, and in the event of adoption of said Constitutional Amendment, this Act shall become operative as a law upon the date such Constitutional Amendment is effective. In the event the proposed Constitutional Amendment shall fail to be adopted, then in such event this Act shall never become effective or operative in whole or in part."

Section 7 of the 1973 amendatory act provided: "Section 2 of this Act [amending § 14 of this article] does not take effect unless the amendment to Article III, Section 49-b, proposed by House Joint Resolution No. 6, Acts of the 63rd Legislature, Regular Session, 1973, [amending Const. art. 3, § 49-b] is adopted, and if that amendment is adopted, Section 2 takes effect on its adoption." The proposed constitutional amendment was voted on at election held November 6, 1973, and was approved by the electors.

#### **Art. 5421n. Leases by Cities, Towns and Political Subdivisions; Pooling Provisions and Unit Operation**

##### **Leases by Cities and Towns**

Sec. 1. Cities and towns chartered or organized under the General Laws of Texas, or by special act or charter, are hereby authorized to insert in any oil and gas lease or in any oil, gas and mineral lease executed by them in accordance with existing law, a provision which authorizes the lessee to pool the lease, the lands or minerals included in it, or any part thereof, with any other lands, leases, mineral estates, or parts thereof, to form a drilling or spacing unit or units for the exploration, development, and production of oil or gas; and which authorizes the lessee to form such units and accomplish such pooling by written designations filed in the county in which the land is situated. With respect to any lands owned by any such city or town, the drilling or spacing units shall not exceed the minimum number of acres upon which an oil or gas well must be located in order to comply with the rules, regulations, or orders of the Railroad Commission of Texas or any other regulatory body, State or Federal, having authority to control or regulate the spacing of such oil or gas wells. Any such lease may further provide in substance: (1) that the entire acreage so pooled into a unit shall be treated for all purposes except the payment of royalties as if it were included in the lease, and drilling or re-working operations and production of oil or gas on any part of such unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and (2) that in lieu of the royalties provided for in the lease, the lessor shall receive on production from a pooled unit only such proportion of the royalty provided for in the lease as the amount of lessor's

acreage placed in the unit or its royalty interest therein on an acreage basis bears to the total acreage contained in the unit.

##### **Leases by Political Subdivisions**

Sec. 2. Political subdivisions which are bodies corporate with recognized and defined areas are hereby authorized to insert in any oil and gas lease or in any oil, gas and mineral lease executed by them in accordance with existing law a provision which authorizes the lessee to pool the lease, the lands or minerals included in it, or any part thereof, with any other lands, leases, mineral estates, or parts thereof, to form a drilling or spacing unit or units for the exploration, development, and production of oil or gas; and which authorizes the lessee to form such units and accomplish such pooling by written designations filed in the county in which the land is situated. With respect to school lands owned by a county, which are governed by Article 7, Section 6, of the Constitution of Texas, the leases may authorize the formation of drilling or spacing units upon such terms and provisions as the Commissioners Court of the county may deem best. With respect to any other lands owned by any such political subdivision, the drilling or spacing units shall not exceed the minimum number of acres upon which an oil or gas well must be located in order to comply with the rules, regulations, or orders of the Railroad Commission of Texas or any other regulatory body, State or Federal, having authority to control or regulate the spacing of such oil or gas wells. Any such lease may further provide in substance: (1) that the entire acreage so pooled into a unit shall be treated for all purposes except the payment of royalties as if it were included in the lease, and drilling or re-working operations and production of oil or gas on any part of such unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and (2) that in lieu of the royalties provided for in the lease, the lessor shall receive on production from a pooled unit only such proportion of the royalty provided for in the lease as the amount of lessor's acreage placed in the unit or its royalty interest therein on an acreage basis bears to the total acreage contained in the unit.

##### **Amendment of Existing Leases**

Sec. 3. Upon application of the lessee, or present owner of any oil and gas lease or oil, gas and mineral lease heretofore validly executed by any city, town or political subdivision referred to in this Act, such lease may, in the discretion of the governing body of such city, town or political subdivision, without notice, be amended so as to include a pooling provision containing the terms set out above.

##### **Agreements for Unit Operation**

Sec. 4. Cities and towns chartered or organized under the General Laws of Texas, or

by any special act or charter referred to in Section 1 above, and political subdivisions which are bodies corporate with recognized and defined areas, referred to in Section 2 above, are hereby authorized to commit, without notice, any royalty interest owned by them in oil or gas to agreements that provide for the operation of areas as a unit for the exploration, development, and production of oil or gas. Such agreements may contain such terms and provisions as such city, town or political subdivision may deem best, and may provide in substance: (a) that operations incident to the drilling of a well upon any portion of a unit shall be deemed for all purposes to be the conduct of such operations upon each separately-owned tract in the unit by the several owners thereof; (b) that the production allocated to each tract included in a unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon; (c) that any lease covering any part of the area committed to the agreement shall continue in force as long as oil or gas is produced in paying quantities from any part of the unit area; and (d) that royalties reserved to such city, town or political subdivision from any tract or portion thereof included within the unit shall be paid only on that portion of the production allocated to the tract, or on the value of such production so allocated, in accordance with the agreement. No agreement shall be entered into by any city, town or political subdivision that shall in any manner commit such city, town or political subdivision to the payment of any part of the cost or expense of operating any unit area or any well located thereon.

#### Partial Invalidity

Sec. 5. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding.

[Acts 1953, 53rd Leg., p. 686, ch. 262.]

#### Art. 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect

Any oil, gas and mineral lease, or oil and gas lease, heretofore granted for a valid consideration by any city, including home rule cities, town, village, county or any of the following political subdivisions of this state: water control and improvement districts, water control and preservation districts, water control districts, water improvement districts, water power control districts, water supply district, or irrigation districts, shall not be cancelled or held void or voidable because the lessor in any such lease or leases has failed to give notice by newspaper published in the county in which the leased lands are located of the intention to grant any such oil, gas and mineral lease, or oil and gas lease, on lands belonging to such lessor, stating the time and place where bids

for such leases were to have been received; provided, however, that such lease or leases may be declared void or voidable for any other cause; and provided further, that nothing herein contained shall be construed as affecting pending litigation in which the validity of any such lease or leases is being questioned for any reason, including the failure to give such newspaper notice.

[Acts 1955, 54th Leg., p. 773, ch. 280, § 1.]

#### Art. 5421p. Lease of Lands of Political Subdivisions

##### Political Subdivisions Authorized to Lease Land for Mineral Development

Sec. 1. Political subdivisions which are bodies corporate with recognized and defined areas, are hereby authorized to lease for mineral development purposes any and all lands which may be owned by any such political subdivision.

##### Boards or Bodies Authorized to Exercise Right; Procedure

Sec. 2. The right to lease such lands shall be exercised by the governing boards, the commission or commissioners of such political subdivision which are by law constituted with the management, control, and supervision of such subdivision, and when in the discretion of such governing body they shall determine that it is advisable to make a lease of any such lands belonging to such district or subdivision, such governing body shall give notice of its intention to lease such lands, describing same, by publication of such notice in some newspaper published in the county, having a general circulation therein, once a week for a period of three (3) consecutive weeks, designating the time and place after such publication where such governing body will receive and consider bids for such mineral leases as such governing body may determine to make. On the date specified in said notice, such governing board or body shall receive and consider any and all bids submitted for the leasing of said lands or any portions thereof which are advertised for leasing, and in the discretion of such governing body shall award the lease to the highest and best bidder submitting a bid therefor, provided that if in the judgment of such governing body the bids submitted do not represent the fair value of such leases, such governing body in their discretion may reject same and again give notice and call for additional bids, but no leases shall in any event be made except upon public hearing and consideration of said bids and after the notice as herein provided.

##### Public Auction; Amount of Royalty; Term of Lease

Sec. 2a. Provided that all such leases may be granted by public auction and that no leases shall be executed in any case except and unless the lessor shall retain at least one-eighth royalty, provided further that in no case shall the primary term of said lease be for more than a

period of ten (10) years from the date of execution and approval thereof.

[Acts 1937, 45th Leg., p. 568, ch. 279.]

**Art. 5421q. Taking Park, Recreational, etc., Land for Other Public Use; Notice; Hearing**

Sec. 1. No department, agency, political subdivision, county, or municipality of this state shall approve any program or project that requires the use or taking of any public land designated and utilized prior to the arrangement of such program or project as a park, recreation area, scientific area, wildlife refuge, or historic site, unless such department, agency, political subdivision, county, or municipality, acting through its duly authorized governing body or officer, shall determine, after notice and a public hearing as required herein, that (1) there is no feasible and prudent alternative to the use or taking of such land, and (2) such program or project includes all reasonable planning to minimize harm to such land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from such use or taking; clearly enunciated local preferences shall be considered, and the provisions of the Act do not constitute a mandatory prohibition against the use of such area if the findings are made that justify the approval of a program or project.

Sec. 2. When any program or project requires notice and a public hearing before approval, notice thereof shall be given in writing to the person, organization, department or agency that has supervision of the land proposed to be used or taken. The notice shall state clearly the proposed program or project, and the date and place for the public hearing, and the notice be given at least 30 days before the date for the public hearing. Notice shall also be given to the public by publishing a notice similar to that specified in this section once a week for three consecutive weeks. The last days of publication shall not be less than one week or more than two weeks before the date of the hearing. The notice shall be published in a newspaper of general circulation, which paper must be published at least six days a week in the county where the land proposed to be used or taken is situated. If there be no such newspaper, then the notice shall be published in such a newspaper that is published in any county adjoining the county where the land is situated; and, if there be no such newspaper published in any adjoining county, then in such a newspaper published in the nearest county to the county where the land is situated. Provided, that if there be no such daily newspaper published therein, said notice shall be published in any newspaper of general circulation published in the political subdivision affected. And if no newspaper be published in such political subdivision, notice shall be published in a newspaper published in the nearest political subdivision thereto.

Sec. 3. Judicial review of the validity or invalidity of the approval or disapproval of a program or project is barred unless the petition for review is filed within thirty days after the approval or disapproval is announced.

[Acts 1969, 61st Leg., p. 838, ch. 276, eff. May 22, 1969.]

**Art. 5421r. Lists of Public Lands for Sale or Lease; Reproducing, Preparing, Selling or Furnishing**

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

Sec. 2. Any person, firm, corporation or association of persons violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than One Thousand (\$1,000.00) Dollars. The conviction of an agent or employee shall not bar conviction of the principal also.

[Acts 1943, 48th Leg., p. 356, ch. 235.]

**Art. 5421z. Indian Affairs**

**SUBCHAPTER A. STRUCTURE OF COMMISSION**

**Creation of Commission**

Sec. 1. The Commission for Indian Affairs is created.

**Members of Commission**

Sec. 2. The Commission consists of three members appointed by the Governor with the advice and consent of the Senate.

**Terms of Office**

Sec. 3. (a) Each member holds office for a term of six years and until his successor is appointed and qualified.

(b) One of the first three members appointed by the Governor shall serve a term expiring on January 31, 1967; one of the members shall serve a term expiring on January 31, 1969; and one of the members shall serve a term expiring on January 31, 1971.

**Chairman**

Sec. 4. The Board shall elect a chairman from among its members, who shall serve for a period of two years or until his successor is elected.

## Meetings of Commission

Sec. 5. (a) The Commission shall hold at least four public meetings per year at times and places fixed by rule of the Commission. The Commission shall make rules providing for the holding of special meetings.

(b) Two members of the Commission constitute a quorum for the transaction of business.

## Compensation of Members

Sec. 6. Each member is entitled to receive per diem compensation for each day he actually attends a meeting and is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided in the General Appropriations Act.

## SUBCHAPTER B. ALABAMA-COUSHATTA INDIAN RESERVATION

## Commission Responsibilities

Sec. 7. A responsibility of the Commission is the development of the human and economic resources of the Alabama Coushatta Indian Reservation and to assist the Tribal Council in making the Reservation self-sufficient. Specifically, the Commission shall assist the Tribal Council in improving the health, educational, agricultural, business, and industrial capacities of the Reservation.

## Transfer of Functions, Property, Etc.

Sec. 8. All powers, duties, and functions with respect to the supervision, management, and control of the Alabama-Coushatta Indian Reservation, previously vested in the Board of Texas State Hospitals and Special Schools, and all appropriated balances, property, personnel, and records used by the Board in conjunction with such powers, duties, and functions are transferred to the Commission for Indian Affairs.

## Superintendent

Sec. 9. The Commission shall appoint a Superintendent of the Reservation. The Superintendent serves at the will of the Commission. He is responsible for the management and supervision of the Reservation, subject to the policy direction of the Commission.

## Contracts with Local Agencies

Sec. 10. The Commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the Reservation, in order to implement the planning and development of the Reservation. Counties and local units of government are authorized to cooperate with the Commission and may furnish the use of any equipment necessary in the development of the Reservation.

## Convict Labor

Section 10A. The Commission may use the labor of trusty state convicts to assist in carrying out the purposes of this Act. The Texas

Department of Corrections may supply available convicts for this purpose and shall retain control of the convicts at all times. The time spent by a convict working on the Reservation shall be counted as time served in the penitentiary.

## Gifts, Grants, and Donations

Sec. 11. The Commission may accept gifts, grants, and donations of money, personal property and real property for use in development of the Reservation. It may acquire by gift or purchase, any additional lands necessary for improvement of the Reservation, its income, and economic self-sufficiency.

## Federal Grants

Sec. 12. The Commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the Reservation.

## Tribal Council May Issue Bonds

Sec. 13. Subject to the written approval of the Commission, the Tribal Council may issue revenue bonds or any other evidence of indebtedness, in order to finance the construction of improvements on the Reservation and for the purchase of additional lands necessary therefor or for improvement of the income and economic conditions of the Reservation. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue-producing properties, interests, or facilities of the 3,071-acre tract of land which is held in trust by the State of Texas for the benefit of the Indians of the Alabama and Coushatta Tribes under the authority of Public Law 627, Acts of the 83rd Congress, 1954, '68 Stat. 768, 25 U.S.C.A., Sections 721 et seq.

## Maturity; Redemption

Sec. 14. All bonds issued by the Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the Commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

## Form, Conditions, Details of Bonds

Sec. 15. Subject to the restrictions contained in this Act, the Tribal Council and the Commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the Commission, deems such action to be necessary or appropriate.

## Sale; Terms; Price; Interest

Sec. 16. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the Commission to be the most advantageous price and terms reasonably obtainable. However, the interest cost of the money received may not

exceed eight per cent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from such computation, however, the amount of any premium to be paid on redemption of any bonds prior to maturity.

#### Expenses; Fees

Sec. 17. The Tribal Council, with the approval of the Commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

#### Bonds as Investments and Security

Sec. 18. All bonds issued under this Act are legal, authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political subdivisions and public agencies of the State, and when accompanied by all unmatured coupons appurtenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

#### Pledge of Revenues and Income

Sec. 19. The Tribal Council, with the approval of the Commission, may pledge the rents, royalties, revenue, and income from revenue-producing properties and facilities of the 3,071-acre tract, to the payment of the interest on and the principal of the bonds, and may enter into agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge, and disposition of them. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the Commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

#### Disposition of Oil and Gas Revenue

Sec. 20. All revenues realized from the leasing of the 3,071-acre tract under the authority of Chapter 325, Acts of the 52nd Legislature, 1951 (Article 5382d, Vernon's Texas Civil Statutes), shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or depositories designated in writing by the Tribal Council and the Commission. These funds shall be placed in a special account known as the Alabama-Coushatta Mineral Fund and shall be expended for such purposes as the Tribal Council shall recommend, with the approval of the Commission.

#### Debt Against State

Sec. 21. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by the Tribal Council under this Act shall be construed as creating a debt

against the State; and every such contract, bond, note, or other evidence of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

#### Leases to Tribal Members for Residential Purposes

Sec. 21A. The Tribal Council, with the approval of the Commission, may execute lease agreements under which any member of the tribe, as lessee, may occupy for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, any designated lot or tract of land which may be included in the 1,280-acre tract conveyed to the Alabama Indians by authority of Chapter XLIV, Acts of the 5th Legislature, 1854.

### SUBCHAPTER C. TIGUA INDIAN COMMUNITY

#### Commission Responsibilities

Sec. 22. A responsibility of the Commission is the development of the human and economic resources of the Tigua Indian community and to assist the Tribal Council in making the community self-sufficient. Specifically, the Commission shall assist the Tribal Council in improving the health, educational, agricultural, business, and industrial capacities of the community.

#### Superintendent

Sec. 23. The Commission shall appoint a Superintendent for the community. The Superintendent serves at the will of the Commission. He is responsible for the management and supervision of the activities of the Commission at the community, subject to the policy direction of the Commission.

#### Contracts with Local Agencies

Sec. 24. The Commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the Tigua community, in order to implement the planning and development of the Tigua community. Counties and local units of government are authorized to cooperate with the Commission and may furnish the use of any equipment necessary in the development of the Tigua community.

#### Gifts, Grants, and Donations

Sec. 25. The Commission may accept gifts, grants, and donations of money, personal property and real property for use in development of the Tigua community. It may acquire by gift or purchase, any additional lands necessary for improvement of the Tigua community, its income, and economic self-sufficiency.

#### Federal Grants

Sec. 26. The Commission may negotiate with any agency of the United States in order

to obtain grants to assist in the development of the Tigua community.

#### Tribal Council May Issue Bonds

Sec. 27. Subject to the written approval of the Commission, the Tribal Council may issue revenue bonds or any other evidences of indebtedness in order to finance the construction of improvements on the Reservation and for the purpose of additional lands necessary therefor or for improvements of the income and economic conditions of the Reservation. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue producing properties, interests, or facilities on all lands which are owned by the State of Texas for the use and benefit of the Tigua Indian Community.

#### Maturity; Redemption

Sec. 28. All bonds issued by the Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the Commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

#### Form, Conditions, Details of Bonds

Sec. 29. Subject to the restrictions contained in this Act, the Tribal Council and the Commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the Commission, deems such action to be necessary or appropriate.

#### Sale; Terms; Price; Interest

Sec. 30. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the Commission to be the most advantageous price and terms reasonably obtainable. However, the interest cost of the money received may not exceed eight per cent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from such computation, however, the amount of any premium to be paid on redemption of any bonds prior to maturity.

#### Expenses; Fees

Sec. 31. The Tribal Council, with the approval of the Commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

#### Bonds as Investments and Security

Sec. 32. All bonds issued under this Act are legal, authorized investments for banks,

savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political subdivisions and public agencies of the State, and when accompanied by all unmatured coupons appurtenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

#### Pledge of Revenues and Income

Sec. 33. The Tribal Council, with the approval of the Commission, may pledge the rents, royalties, revenue, and income from revenue producing properties and facilities of all lands which is owned by the State of Texas for the use and benefit of the Tigua Indian Community. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the Commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

#### Disposition of Revenues

Sec. 34. All revenues realized from the leasing of all lands which is owned by the State of Texas for the use and benefit of the Tigua Indian Community shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or depositories designated in writing by the Tribal Council and the Commission. These funds shall be placed in a special account known as the Tigua Indian Community Mineral Fund and shall be expended for such purposes as the Tribal Council shall recommend, with the approval of the Commission.

#### Debt Against State

Sec. 35. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by the Tribal Council under this Act shall be construed as creating a debt against the State; and every such contract, bond, note or other evidence of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

[Acts 1965, 59th Leg., p. 552, ch. 279, eff. Sept. 1, 1965; Acts 1967, 60th Leg., p. 539, ch. 234, § 1, eff. May 19, 1967; Acts 1967, 60th Leg., p. 662, ch. 276, § 1, eff. May 23, 1967; Acts 1967, 60th Leg., p. 930, ch. 407, § 1, eff. June 8, 1967; Acts 1971, 62nd Leg., p. 1816, ch. 541, § 1, eff. June 1, 1971; Acts 1971, 62nd Leg., p. 2369, ch. 730, § 1, eff. June 8, 1971.]

#### Art. 5421z-1. Transfer of Trust Responsibilities Respecting the Tigua Indian Tribe

If the Congress of the United States so legislates, and the Tigua Indian Tribe indicates its consent by appropriate resolution, the governor may accept on behalf of the state a transfer of the trust responsibilities of the United States respecting the Tigua Indian Tribe. Those trust responsibilities shall be administered by the Commission for Indian Affairs.

[Acts 1967, 60th Leg., p. 666, ch. 277, § 1, eff. May 23, 1967.]

# TITLE 87

## LEGISLATURE

### Article

- 5422. Time of Meeting.
- 5423. Who May Organize.
- 5424. Who Shall Preside.
- 5425. Duties of Clerk.
- 5426. Credentials.
- 5427. If No Quorum.
- 5428. Election of Speaker.
- 5428a. Candidate for Speaker: Campaign Financing.
- 5428b. Legislative Bribery.
- 5429. Selection of Officers.
- 5429a. Repealed.
- 5429b. Texas Legislative Council.
- 5429b-1. Statutory Revision Program.
- 5429b-2. Code Construction Act.
- 5429c. Legislative Budget Board.
- 5429c-1. Fiscal Notes and Cost Projections of Legislative Budget Board.
- 5429c-2. Legislative Information System Committee.
- 5429c-3. Performance Audits and Reports by Legislative Budget Board.
- 5429d. Distribution of Journals.
- 5429e. Membership on Interim Committees.
- 5429f. Legislative Reorganization Act of 1961.

#### Art. 5422. Time of Meeting

The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A.D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law. [Acts 1925, S.B. 84.]

#### Art. 5423. Who May Organize

Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives.

[Acts 1925, S.B. 84.]

#### Art. 5424. Who Shall Preside

For the purpose of such organization the Secretary of State shall preside at each recurring session of the Legislature. Should there be no Secretary of State, or in case he be absent or unable to attend, the Attorney General shall attend and perform the duties prescribed. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk who shall have been chief clerk of the House the preceding session, if he be present, to take a minute of the proceedings. [Acts 1925, S.B. 84.]

#### Art. 5425. Duties of Clerk

The clerk, under the direction of the Secretary of State, shall:

1. Call all the counties in alphabetical order. Should returns of election in any coun-

ty for members of the Legislature not be made to the office of Secretary of State, he shall nevertheless call such county.

2. When the counties are called and the members elect appear and present their credentials, administer to each the official oath.

[Acts 1925, S.B. 84.]

#### Art. 5426. Credentials

Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of Secretary of State.

[Acts 1925, S.B. 84.]

#### Art. 5427. If No Quorum

If no quorum is in attendance on the day appointed for the meeting of the Legislature, the Secretary of State and clerk shall attend from day to day until a quorum shall appear and be qualified as above.

[Acts 1925, S.B. 84.]

#### Art. 5428. Election of Speaker

When a quorum has appeared and been qualified, the House shall proceed to the election of a Speaker, unless a majority of the members present shall decide to defer said election.

[Acts 1925, S.B. 84.]

#### Art. 5428a. Candidate for Speaker: Campaign Financing

##### Definitions

Sec. 1. In this article:

(1) "Candidate" means any member of or candidate for the Texas House of Representatives who has announced that he will seek or by his actions, words, or deeds does seek election to the office of Speaker of the House of Representatives.

(2) "Campaign expenditure" means the expenditure of money or the use of services or any other thing of value to aid or defeat the election of any candidate.

(3) "Campaign funds" mean the candidate's personal funds that are devoted to the campaign for speaker and any money, services, or other things of value that are contributed or loaned to the candidate for use in his campaign for speaker.

(4) "Filing date" means the first day of January, March, May, July, September, and November and the day preceding each regular and called session of the legislature.

##### Record Keeping

Sec. 2. Each candidate shall keep records, separate from the records required by the Elec-



tion Code for his campaign for public office, of all the information required to be filed by this article.

Filed Statement of Contributions, Loans  
and Expenditures

Sec. 3. Each candidate shall file a sworn statement with the office of the secretary of state on the first filing date after the announcement or initiation of his candidacy, and on each subsequent filing date during his candidacy and thereafter until all campaign loans have been repaid, listing the following information for the period since the last filing date:

(1) each contribution of money received by him, his agents, servants, staff members or employees in behalf of his campaign, the complete name and address of the contributor, and the date and amount of the contribution;

(2) each contribution of services and other things of value, other than money, received by him, his agents, servants, staff members or employees in behalf of his campaign, the nature of the contribution, the complete name and address of the contributor, and the date and value of the contribution;

(3) each loan made to him, his agents, servants, staff members or employees in behalf of his campaign, including all loans listed in previous filings that are as yet unpaid or that were paid during the period covered by the present filing, the complete name and address of the lender, the name and address of each person responsible on the note, if any other than the candidate, the date and amount of the note, the intended source of funds to repay the note, and any payments already made on the note and their source;

(4) each expenditure of campaign funds made by him, his agents, servants, staff members or employees in behalf of his campaign, the complete name and address of each person to whom a payment in excess of ten dollars (\$10) is made, and the purpose of each expenditure; and

(5) each candidate shall file his sworn statement on an official form designed by the secretary of state.

Requisites of Filing

Sec. 4. A statement shall be considered filed in compliance with this article if it is sent to the secretary of state at his official post office address by registered or certified mail from any point in this state before the filing deadline, as shown by the postmark on the letter, except as hereinafter set out. The statement filed on the day preceding the convening of any regular or called session must actually be delivered and in the hands of the secretary of state not later than 4:00 p. m. on such day.

Failure to File; Penalty

Sec. 5. Any candidate who wilfully fails to file the statement required by this article com-

mits a misdemeanor punishable by a fine of not less than \$500, nor more than \$5,000, or by imprisonment for not more than one year, or by both.

Public Inspection and Preservation of Statements

Sec. 6. All statements filed under this article shall be open to public inspection. Each statement shall be preserved for two years after the election for which it was filed, after which it may be destroyed unless a court of competent jurisdiction has ordered further preservation.

Contributions and Loans from Organizations  
Prohibited; Penalty

Sec. 7. (a) Except as provided by Subsection (b) of this section, no corporation, partnership, association, firm, union, foundation, committee, club or other organization or group of persons may contribute or lend or promise to contribute or lend money or other thing of value to any candidate or to any other person, directly or indirectly, for the purpose of aiding or defeating the election of any candidate.

(b) This section does not apply to loans made in the due course of business to candidates for campaign purposes by a corporation that is legally engaged in the business of lending money and that has continuously conducted the business for more than one year prior to making the loan.

(c) Any agent, officer, or director of a corporation, partnership, association, firm, committee, club, or other organization or group of persons who consents to a contribution, loan, or promise of a contribution or a loan that is prohibited by this article commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

(d) Any candidate who knowingly receives a contribution, loan, or promise of a contribution or loan from a corporation, partnership, association, firm, committee, club, or other organization or group of persons commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

Penalty for Conspiracy to Circumvent Act

Sec. 8. Any two or more persons who conspire to circumvent any of the provisions of this Act shall be guilty of a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

Permitted Expenditures of Campaign Funds; Penalty

Sec. 9. (a) A candidate may expend campaign funds to pay for:

- (1) travel for the candidate, his immediate family, and his campaign staff;
- (2) the employment of clerks and stenographers;
- (3) clerical and stenographic supplies;
- (4) printing and stationery;

- (5) office rent;
- (6) telephone, telegraph, postage, freight, and express expenses;
- (7) advertising and publicity;
- (8) the expenses of holding political and other meetings designed to promote his candidacy;
- (9) the employment of legal counsel; and
- (10) retiring campaign loans.

(b) Any candidate who expends campaign funds for any purpose other than those enumerated in Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

**Individual Contributions for Personal Services, Traveling Expenses and Correspondence; Penalty**

Sec. 10. (a) Any individual other than a candidate may contribute his personal services and traveling expenses to aid or defeat any candidate and may expend a sum, which may not exceed \$100 in the aggregate, for the cost of correspondence to aid or defeat the election of any candidate.

(b) Except as provided in Subsection (a) of this section, all campaign expenditures must be made by the candidate from campaign funds.

(c) Any individual other than a candidate who, acting alone or together with other individuals, expends or authorizes the expenditure of funds in excess of \$100 for correspondence to aid or defeat the election of any candidate, or who expends any funds for any other purpose except personal services and traveling expenses to aid or defeat the election of any candidate, commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

**Contributions from Executive or Judicial Officers and Employees Prohibited; Penalty**

Sec. 11. No person who is an elected officer or employee of either the executive or judicial branch of the state government may contribute his personal services, money or goods of value toward the candidacy of any person for the office of Speaker of the House of Representatives.

Any person who violates this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

**Prosecutions by Indictment**

Sec. 12. All prosecutions under the terms of this Act must be brought by indictment rather than by complaint and information.

[Acts 1973, 63rd Leg., p. 72, ch. 48, § 1, eff. April 18, 1973.]

**Saved from Repeal**

*Acts 1973, 63rd Leg., p. 1101, ch. 423, enacting the Campaign Reporting and Disclosure Act of 1973, provided in § 14: "Nothing in this Act repeals or otherwise affects Article 5428a, Revised Civil Statutes of Texas, 1925, as added by House Bill No. 8, Acts of the 63rd Legislature, Regular Session, 1973."*

Section 2 of the 1973 Act provides: "Severability. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable."

**Art. 5428b. Legislative Bribery**

**Promises or Threats as Bribery**

Sec. 1. A person commits legislative bribery if, with intent to influence any member of or candidate for the House of Representatives in casting his vote for Speaker of the House of Representatives, he:

(1) promises or agrees to cause:

(A) any appointment of any person to a chairmanship or vice-chairmanship of any committee or subcommittee of the House of Representatives;

(B) any appointment of any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any preferential treatment on any legislation or appropriation;

(D) any employment for any person; or

(E) any economic benefit to any person; or

(2) threatens to cause:

(A) any failure to appoint any person to a chairmanship or vice-chairmanship of a committee or subcommittee of the House of Representatives;

(B) any failure to appoint any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any unfavorable treatment on any legislation or appropriation;

(D) any refusal of or removal from employment of any person; or

(E) any withholding of economic benefit from any person.

Accepting Benefits as Bribery

Sec. 2. A member of or candidate for the House of Representatives commits legislative bribery if, on the representation or understanding that he will cast his vote for a particular person for Speaker of the House of Representatives, he solicits, accepts, or agrees to accept:

(A) any appointment of or refusal to appoint any person to a chairmanship or vice-chairmanship of a committee or subcommittee of the House of Representatives;

(B) any appointment of or refusal to appoint any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any preferential or unfavorable treatment on any legislation or appropriation;

(D) any employment of, refusal of employment of, or removal from employment of any person; or

(E) any economic benefit to or withholding of economic benefit from any person.

Economic Benefit Defined

Sec. 3. In this Article "economic benefit" means anything reasonably regarded as economic gain or advantage, including campaign contributions.

Permitted Communications, Discussions and Advocacy

Sec. 4. Nothing in this Article shall be construed to prohibit any person from contacting or communicating with any member of or candidate for the House of Representatives with regard to any legislative matter or to prohibit any member of or candidate for the House of Representatives from discussing, taking a position on, or advocating any action on substantive issues in a Speaker's race or any other legislative matter.

Penalty

Sec. 5. Legislative bribery is a felony punishable by confinement in the penitentiary for not less than two years or more than five years.

[Acts 1973, 63rd Leg., p. 75, ch. 49, § 1, eff. April 18, 1973.]

Art. 5429. Selection of Officers

When an election for Speaker shall have been had, the Speaker-elect shall immediately take the Chair, and the House shall proceed to its further organization by choosing the necessary officers, to whom the Speaker shall administer the official oath.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 654, ch. 303, § 3.]

Art. 5429a. Repealed by Acts 1961, 57th Leg., p. 654, ch. 303, § 24, eff. June 14, 1961

See, now, art. 5429f.

Art. 5429b. Texas Legislative Council

Creation and Membership of Council

Sec. 1. There is hereby created a State Legislative Council which shall consist of five Senators to be appointed by the President of the Senate and ten Representatives to be appointed by the Speaker of the House of Representatives. The President of the Senate and Speaker of the House shall also be ex-officio members of the Council, and the President of the Senate shall be its Chairman and the Speaker of the House its Vice Chairman. The members appointed from each House shall be from various sections of the State and not more than two members shall be appointed from any one Congressional District. Vacancies occurring in the membership shall be filled by appointments made by the Chairman if the vacancy calls for the appointment of a Senator, and by the Speaker if it calls for the appointment of a Representative.

All members of the Council shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the next Regular Session of the Legislature following their appointment. All members appointed for the term ending with the convening of the Regular Session of the 52nd Legislature shall be appointed within twenty days after the effective date of this Act.

Meetings

Sec. 2. The first meeting of the Council shall be held in the Senate Chamber on call of the Chairman within ten days after all its members have been appointed. At its first meeting, the Council shall adopt rules of procedure and provide for the employment of necessary clerical, technical, and professional assistance. Thereafter, the Council shall meet as often as may be necessary to perform its duties; and, in any event, it shall meet at least once in each quarter. Twelve members including the Chairman and Vice Chairman shall constitute a quorum, and a majority of a quorum shall have authority to act in any matter falling within the jurisdiction of the Council.

Duties

Sec. 3. The Council shall have power and its duties shall be:

(a) To investigate departments, agencies and officers of the State and to study their functions and problems;

(b) To make studies for the use of the legislative branch of the State Government;

(c) To gather information for the use of the Legislature;

(d) To make such other investigations, studies, and reports as may be deemed useful to the legislative branch of the State Government;

(e) To sit and perform its duties in the interim between sessions; and

(f) To report to the Legislature its recommendations from time to time and to accompany its reports with such drafts of legislation as it deems proper.

**Minutes and Reports; Rights of Members of Legislature**

Sec. 4. The Council shall keep complete minutes of its meetings, make periodic reports to all members of the Legislature, and keep said members fully informed of all matters which may come before the Council, the actions taken thereon, and the progress made in relation thereto. Any member of the Legislature shall have the right to attend any of the sessions of the Council, and may present his views on any subject which the Council may at any particular time be considering; but he shall not have the right to participate in any decision which the Council may make.

**Witnesses**

Sec. 5. The Council, or any committee thereof when so authorized by the Council, is empowered to hold public or executive hearings, at such times and places within the State as may be determined, to make investigations and surveys. Any member of the Council or any of its committees shall have power to administer oaths at said hearings to witnesses appearing thereat. By subpoena, issued over the signature of its Chairman or Vice Chairman and served by the Council's Sergeant-at-Arms or any peace officer in the manner in which District Court subpoenas are served, the Council or any of its committees may summon and compel attendance of witnesses and the production of record books, papers, documents, and records of their custody. If any witness summoned shall refuse to appear or to answer inquiries propounded or shall fail or refuse to produce books, records, or documents under his control, when the same are demanded, the Council or any of its committees shall report the fact to the District Court of Travis County, Texas, and it shall be the duty of such Court to compel obedience to the Council's or committee's subpoena by attachment proceedings for contempt as in the case of disobedience of subpoena issued from such Court. Witnesses attending the hearings or meetings of the Council under process, shall be allowed the same mileage and per diem as is allowed witnesses before any grand jury in this State. The Council shall have power to inspect and make copies of any books, records, or files of the departments and institutions and any and all other instruments and documents pertinent to the matter under investigation by said Council, including any county or political subdivision of this State, and shall also have power to examine and audit the books of any person, firm, or corporation having dealings with departments and institutions under investigation by said Council.

**Assistance from Other Agencies**

Sec. 6. The Council may call upon the Attorney General's Department, State Auditor, the State Library and all other State departments and agencies for assistance and advice; and it shall be the duty of the Attorney General's Department to render opinions, and give counsel and assistance to said Council on request of the Chairman or Vice Chairman of said Council.

**Expenses and Salaries**

Sec. 7. The Chairman and Vice Chairman of the Council and all members thereof shall be reimbursed for all necessary traveling and other expenses incurred in the performance of their duties; and the Council shall determine the salaries of its assistants and employees.

**Appropriation**

Sec. 8. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, the sum of Twenty-five Thousand (\$25,000.00) Dollars, or so much thereof as may be necessary, to pay the expenses of members of the Council and salaries of assistants, employees and for necessary supplies and equipment for the remainder of the fiscal year ending August 31, 1949. The amounts of allowable expenditures by said Council thereafter shall be as determined and provided for in the general biennial appropriation bill or in any bill hereafter passed making appropriation to pay salaries of legislative employees and/or expenses of the Legislature. The certificate of the Chairman or the Vice Chairman shall be sufficient evidence to the Comptroller of the validity of all claims for mileage and per diem expenses, salaries of employees, and other expenses authorized; and he shall issue the necessary warrants for same upon the Treasury of the State of Texas.

**Saving Clause**

Sec. 9. If any section, subsection, paragraph, or provision of this Act shall be held invalid by any Court for any reason, it shall be presumed that this Act would have been passed by the Legislature without such invalid portion; and such finding and construction shall not in any way affect the validity of the remainder of this Act.

[Acts 1949, 51st Leg., p. 607, ch. 324.]

**Art. 5429b-1. Statutory Revision Program**

Sec. 1. There is created a permanent statutory revision program for the systematic and continual study of the statutes of this state and for formal revisions on a topical or code basis to clarify, simplify and make generally more accessible, understandable and usable the statutory law of Texas. In carrying out the revision program, the sense, meaning or effect of any legislative act shall not be altered.

Sec. 2. The Texas Legislative Council shall plan and execute the statutory revision pro-

gram. The work of revision shall include but not be limited to:

(a) The preparation of a statutory record showing the status and disposition within the classification of the revised statutes of all acts enacted by the Legislature.

(b) The preparation and submission to the Legislature from time to time in bill form revisions of the statutes on a topic or code basis. Such revisions shall be accompanied by reports containing the revisor's notes explaining in detail the work done.

(c) The formulation and implementation of a continuous revision program whereby the statutes which have been revised and enacted by the Legislature may be kept up to date, thus obviating the necessity of subsequent major revisions.

Sec. 3. (a) A Statutory Revision Advisory Committee shall be appointed by the Chairman of the Texas Legislative Council to consult with and advise the Council with respect to matters relating to the classification and arrangement of the statutes, the numbering system to be used and the preparation of a revisor's manual. The Advisory Committee shall consist of seven (7) members, who shall serve without compensation but shall be allowed actual expenses incurred in attending official meetings of the Committee. All such expenses incurred shall be paid out of any funds appropriated to the Texas Legislative Council. The Advisory Committee shall select one of its members as chairman, and shall meet at the call of the Chairman of the Texas Legislative Council. The Committee shall include representatives of the State Bar of Texas, the judiciary, and the Texas Law Schools. The Advisory Committee shall serve for a period of two (2) years from the date of appointment.

(b) Subsequent Advisory Committees may be appointed to consult with and advise the Legislative Council with respect to matters relating to the revision of particular subjects of the law when the Legislative Council determines a need exists for such a committee. Such Committees shall be appointed in the same manner, shall be similarly constituted and subject to the same provisions as provided in Paragraph (a) of this Section.

[Acts 1963, 58th Leg., p. 1152, ch. 448.]

Art. 5429b-2. Code Construction Act

SUBCHAPTER A. GENERAL PROVISIONS

Purpose

Sec. 1.01. This Act provides rules to aid in the construction of codes (and amendments to them) enacted pursuant to the state's continuing statutory revision program. The rules set out in this Act are not intended to be exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of the codes.

Applicability

Sec. 1.02. This Act applies to

(1) each code enacted by the 60th or a subsequent Legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code, or provision thereof, which amendment, repeal, revision, or reenactment is enacted by the 60th or a subsequent Legislature;

(3) each repeal of a statute by a code; and

(4) each rule promulgated under a code.

Citation of Codes

Sec. 1.03. A code may be cited by its name followed by the specific part concerned. For example:

(1) Business & Commerce Code, Tit. 1;

(2) Business & Commerce Code, Ch. 5;

(3) Business & Commerce Code, Sec. 9.304;

(4) Business & Commerce Code, Sec. 15.06(a);

(5) Business & Commerce Code, Sec. 17.18(b)(1)(B)(ii).

General Definitions.

Sec. 1.04. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "oath" includes affirmation;

(2) "person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity;

(3) "population" means that shown by the most recent federal decennial census;

(4) "property" means real and personal property;

(5) "rule" includes regulation;

(6) "signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing;

(7) "state", when referring to a part of the United States, includes any state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legislative authority of the United States of America;

(8) "swear" includes affirm;

(9) "United States" includes department, bureau, and any other agency of the United States of America;

(10) "week" means seven consecutive days;

(11) "written" includes any representation of words, letters, symbols, or figures; and

(12) "year" means 12 consecutive months.

## SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

### Common and Technical Usage of Words

Sec. 2.01. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

### Tense, Number, and Gender

Sec. 2.02. (a) Words in the present tense include the future tense.

(b) The singular includes the plural, and the plural includes the singular.

(c) Words of one gender include the other genders.

### Authority and Quorum of Public Body

Sec. 2.03. (a) A grant of authority to three or more persons as a public body confers the authority upon a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

### Computation of Time

Sec. 2.04. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

### Reference to a Series

Sec. 2.05. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

## SUBCHAPTER C. CONSTRUCTION OF STATUTES

### Intentions in Enactment of Statutes

Sec. 3.01. In enacting a statute, it is presumed that

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

### Prospective Operation of Statutes

Sec. 3.02. A statute is presumed to be prospective in its operation unless expressly made retrospective.

### Construction Aids

Sec. 3.03. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions, including laws upon the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title, preamble, and emergency provision.

### Captions Not Part of Statute

Sec. 3.04. Title, subtitle, chapter, subchapter, and section captions do not limit or expand the meaning of any statute.

### Irreconcilable Statutes and Amendments

Sec. 3.05. (a) Except as provided in Section 3.11(d) of this Act, if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided in Section 3.11(d) of this Act, if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

### Special or Local Provision Prevails Over General

Sec. 3.06. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

### Statutory References

Sec. 3.07. Unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute.

## Uniform Construction of Uniform Acts

Sec. 3.08. A uniform act included in a code shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

## Enrolled Bill Controls

Sec. 3.09. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

## Repeal of Repealing Statute

Sec. 3.10. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

## Saving Provisions

Sec. 3.11. (a) Except as provided in Subsection (b) of this section, the reenactment, revision, amendment, or repeal of a statute does not affect

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred in respect to it, prior to the amendment or repeal; or

(4) any investigation, proceeding, or remedy in respect to any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment (if not already imposed) shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature which enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision which revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature which enacted the code, the statute controls.

## Severability of Statutes

Sec. 3.12. If any Act passed by the Legislature shall contain a provision for severability, such provision shall prevail in the interpretation of such statute. If any Act passed by the Legislature shall contain a provision for non-

severability, such provision shall prevail in the interpretation of such statute. In the absence of such determination by the Legislature in a particular Act for severability or non-severability, the following construction of such Act shall prevail: If any provision of a statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute which can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

[Acts 1967, 60th Leg., p. 1036, ch. 455, eff. Sept. 1, 1967.]

## Art. 5429c. Legislative Budget Board

## Members; Quorum; Meetings; Committees

Sec. 1. There is hereby created a Legislative Budget Board to be composed of the Speaker of the House of Representatives and four (4) members of the House of Representatives who shall be appointed by the Speaker, one of whom shall be the Chairman of the Appropriations Committee and one of whom shall be the Chairman of the Revenue and Taxation Committee, and of the Lieutenant Governor and four (4) members of the Senate, who shall be appointed by the Lieutenant Governor, one of whom shall be the Chairman of the Finance Committee and one of whom shall be the Chairman of the State Affairs Committee. The Lieutenant Governor shall be the Chairman of said Board, and the Speaker of the House shall be Vice-Chairman of said Board.

A quorum to transact business shall consist of a majority of the members of each House. The Board shall meet at the call of the Chairman or upon the written petition of a majority of the members of each House.

The meetings of the Board shall be conducted at the seat of government; provided, however, that by a majority vote of the members of each House, the Board may meet in such place or places as may be determined by the Board.

The Chairman of the Board may, with the approval of the Board, appoint a committee or committees to visit, inspect and report on any institution, department, agency, officer or employee of the State.

## Director of Budget

Sec. 2. The Board shall appoint a Director of the Budget who shall serve for a period of one year from September 1st of each year, unless sooner discharged by said Board for any reason. The said Director shall be accountable only to said Board. The salary of the Director shall be fixed by said Board. The Chairman of the Board shall approve all items of expense of the Board, prior to payment thereof.

The Director may, with the approval and consent of the Board, employ such clerical and stenographic assistance as may be deemed necessary, and the salaries of such employees shall be fixed by the Board.

The Director of the Board shall have no vote in the deliberations and meetings of the Board.

but may submit recommendations from time to time and shall make recommendations when specifically requested to do so by the Board on such matters as the Board may decide, relating to any functions or duties of any department, institution or agency or of any officer, officers, employee or employees of this State.

The Director of the Budget, under the direction of the Board, shall prepare the general appropriation bills for introduction at each regular session of the Legislature.

#### Estimates and Reports

Sec. 3. All departments, institutions, agencies, officers and employees or agents of the State shall, in addition to those estimates and reports now provided by law relating to appropriations, submit such estimates and reports relating to appropriations as may be requested by the Board, or under its direction, and at such times as may be directed by the Board and in such manner and form as may be provided by the Board under rules and regulations to be prescribed by said Board.

#### Inspections and Hearings

Sec. 4. The Legislative Budget Board or any personnel under its direction may inspect the properties, equipment and facilities of the various departments or agencies of the State government for which appropriations are to be made, and all accounts, general or local funds, either before or after such estimates have been submitted, and consider the same and conduct such hearings on said estimates as, in the discretion of the Board, may be desired.

#### Copies of Budget of Estimated Appropriations

Sec. 5. The Director of the Budget shall, within five days after the convening of any Regular Session of the Legislature, transmit to all members of the Legislature and to the Governor copies of the budget of estimated appropriations prepared by him.

#### Estimates and Reports Under Existing Laws

Sec. 6. All estimates and reports with reference to appropriations heretofore and presently required by law to be made by any department, institution, agency, officer or employee of the State shall continue to be made as provided in Chapter 206, Acts of the 42nd Legislature, Regular Session 1931, Sections 1 to 9, inclusive, and known as Article 689a-1 to 689a-7 inclusive, of the Revised Civil Statutes of Texas, 1925, as amended.

It is intended hereby that the provisions of this bill, when enacted, shall be cumulative of and additional to the provisions of the law mentioned in the next preceding paragraph of this Section.

[Acts 1949, 51st Leg., p. 908, ch. 487.]

### Art. 5429c-1. Fiscal Notes and Cost Projections of Legislative Budget Board

#### System of Fiscal Notes

Sec. 1. The Legislative Budget Board shall establish a system of fiscal notes identifying

the probable costs of any bill or resolution which authorizes or requires the expenditure or diversion of any state funds for any purpose other than those provided for in the general appropriations bill.

#### Cost Estimates

Sec. 2. The Legislative Budget Board shall project cost estimates for a five-year period beginning with the effective date of the affected bill or resolution, and the board shall state whether or not costs or diversions will be involved thereafter.

#### Attachment of Fiscal Notes to Bill or Resolution

Sec. 3. Such fiscal notes shall be attached to the affected bill or resolution before a committee hearing may be conducted. The fiscal note shall be printed on the first page of the bill or resolution on committee report or second printing and on all subsequent printings. The fiscal note shall remain with the bill or resolution throughout the legislative process including submission to the Governor.

#### Severability Clause

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 675, ch. 284, eff. Aug. 27, 1973.]

### Art. 5429c-2. Legislative Information System Committee

#### Creation of Committee

Sec. 1. The Legislative Information System Committee is established as a permanent legislative service agency of the state.

#### Composition

Sec. 2. (a) The committee is composed of:

- (1) the chairman of the Senate Administration Committee;
- (2) the chairman of the House Administration Committee;
- (3) the secretary of the Senate;
- (4) the chief clerk of the House;
- (5) the director of the Legislative Reference Library;
- (6) the director of the Legislative Budget Board;
- (7) the executive director of the Texas Legislative Council; and
- (8) the State Auditor.

(b) Each member's service on the committee shall be considered an additional duty of his regular office or employment.

(c) Any member of the committee may from time to time designate a member of his staff to act in his place on the committee.



Chairman, Etc.

Sec. 3. As soon as possible after the regular biennial appointment of the chairmen of the administration committees of the House and Senate, the committee shall elect a chairman and a vice-chairman and may elect any other officers it deems necessary.

Conduct of Business

Sec. 4. The committee may promulgate rules to govern the calling and holding of meetings and the conduct of its business.

Expenses

Sec. 5. No member of the committee or his designated representative is entitled to receive compensation for his services on behalf of the committee, but each member or his designated representative is entitled to reimbursement for actual and necessary expenses incurred in performing his duties on behalf of the committee, to be paid from funds of the House or agency he represents.

Staff, Consultants, Etc.

Sec. 6. The committee may employ staff and consultants necessary to carry out its duties. In addition, the committee may utilize services and facilities contributed by officers and employees of the House and the Senate and of other legislative service agencies.

Powers and Duties

Sec. 7. (a) The committee shall establish a system, referred to as the Legislative Information System of Texas (LIST), which makes available to the Legislature and its committees and agencies the most modern, efficient, and businesslike equipment, facilities, systems, and techniques that may be provided for the accomplishment of their duties, including data processing systems that will streamline and speed up the drafting, printing, processing, and distribution of legislative documents, the reporting of the status and history of legislative documents, the processing, printing and distribution of journals, statutory revision, printing and publication of the session laws and statutes, and all other mechanics involved in the legislative process.

(b) The committee shall study the legislative process with a view toward making recommendations to the Legislature concerning changes in procedures and methods that may be made and new and improved equipment, facilities, and systems that may be used to make the legislative process in Texas more efficient and businesslike.

(c) The committee may execute contracts to carry out the purposes of this Act.

(d) The committee may provide a service that will enable Members of the Legislature, state agencies, and citizens to be informed of the status of pending legislation and other facts related to the legislative process.

Funding

Sec. 8. The operations of the committee shall be financed with money appropriated to

the committee or to the House or the Senate or to other legislative service agencies on whose behalf equipment, facilities, or systems are being prepared or operated, or any combination of these arrangements.

Severability Clause

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

[Acts 1973, 63rd Leg., p. 758, ch. 334, eff. June 12, 1973.]

Art. 5429c-3. Performance Audits and Reports by Legislative Budget Board

System of Performance Audits and Evaluation of State Agencies

Sec. 1. The Legislative Budget Board is directed to establish a system of performance audits and evaluation designed to provide a comprehensive and continuing review of the programs and operations of each state agency, department, commission or institution.

Performance Reports to Legislature

Sec. 2. (a) The Legislative Budget Board shall make a performance report to the Legislature on the third Tuesday of each January in which the Legislature meets in Regular Session.

(b) The performance report shall be published in such form as the Legislative Budget Board shall direct, but in content the performance report shall treat the programs and operations of each agency, department, commission or institution receiving an appropriation in the most recent General Appropriations Act, after the first full fiscal year of operation of each such agency, department, commission or institution.

(c) The performance report shall analyze the operational efficiency of state agency operations and program performance in terms of explicitly stating the statutory functions each agency, department, commission and institution are to perform and how these statutory functions are being accomplished, in terms of unit-cost measurement, workload efficiency data, and program output standards as the Legislative Budget Board shall establish.

Assistant Director for Program Evaluation; Personnel

Sec. 3. (a) The Director of the Legislative Budget Board shall, with the approval of the Legislative Budget Board, appoint an assistant director for program evaluation who shall report to, and be responsible to, the director of the Legislative Budget Board.

(b) The Director of the Legislative Budget Board shall employ sufficient personnel to effectuate the provisions of this Act.

## Severability Clause

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 764, ch. 338, eff. Aug. 27, 1973.]

## Art. 5429d. Distribution of Journals

Sec. 1. The Presiding Officers of the House of Representatives and Senate shall appoint one (1) of their employees to perform the duty of distributing the Journal for each House respectively.

Sec. 2. It shall be the duty of such appointee to distribute to the Governor, to each Member of the Legislature and upon request, to heads of departments, a copy of the printed Journals of both Houses.

[Acts 1951, 52nd Leg., p. 218, ch. 131.]

## Art. 5429e. Membership on Interim Committees

The membership of any duly appointed Senator or Representative on the Legislative Budget Board or on the Legislative Council, or on any other Interim Committee, shall, on the following contingencies, terminate, and the vacancy created thereby shall be immediately filled by appointment for the unexpired term in the same manner as other appointments to the Legislative Budget Board, the Legislative Council, or the other Interim Committee, as the case may be, are made:

- (a) Resignation of such membership;
- (b) Cessation of membership in the Legislature for death or any reason.

[Acts 1953, 53rd Leg., p. 915, ch. 377, § 1; Acts 1961, 57th Leg., p. 654, ch. 303, § 9.]

## Art. 5429f. Legislative Reorganization Act of 1961

## Short Title

Sec. 1. This Act shall be known and cited as the "Legislative Reorganization Act of 1961."

## Purpose

Sec. 2. The people of Texas having adopted an Amendment to the Constitution in November, 1960, providing for annual salaries to Members of the Legislature, it is the purpose and intent of the Legislature to place its activities on a continuing basis to the end that the responsibilities imposed by law on the Legislature, and on the Members thereof, will be conducted on a more efficient basis and, to the extent possible, without regard to the formal Sessions of the Legislature. The Legislature feels that the functions of government must be conducted on a full-time basis, and it is the purpose of this Act to authorize the committees and other instrumentalities of the Legislature

to continue their work and carry on their responsibilities with some degree of continuity whether or not the Legislature is convened in formal Session.

## Selection of Officers

Sec. 3. Article 5429 of the Revised Civil Statutes of the State of Texas be and same is hereby amended so as hereafter to read as follows:

## Selection of Committees

Sec. 4. Each House of the Legislature shall have authority, by adoption of its Rules of Procedure or by Simple Resolution, to determine the number, composition, function, membership, and authority of its committees, and the two Houses acting together by Concurrent Resolution shall have similar authority with respect to committees created jointly by the two Houses.

## Function of Standing Committees

Sec. 5. Standing committees of each House of the Legislature shall be and they are hereby charged with the duty and responsibility of formulating legislative programs, initiating legislation, and making inquiry into the administration and execution of all laws pertaining to the matters within the jurisdiction of such committee. Each standing committee shall make a continuing study of the matters under its jurisdiction, as well as the instrumentalities of government administering or executing such matters, and shall conduct such investigations as the committee deems necessary to supply it with adequate information and material to discharge its responsibilities. To the extent that each standing committee shall deem it necessary and desirable, it shall draft legislation within the area of its jurisdiction and shall recommend such legislation to whichever House of the Legislature such committee is a part. It shall be the duty of the Chairman of each standing committee to introduce, or cause to be introduced, the legislative programs developed by such committee and to mobilize the efforts of such committee to secure the enactment into law of the proposals of such committee. No standing committee of either House of the Legislature shall be confined in its legislative endeavors to bills, Resolutions or proposals submitted to it by individual Members of the Legislature, but each standing committee shall have full authority and responsibility to seek out problems within its area of jurisdiction and to develop, formulate, initiate and secure passage of legislative programs which the committee deems desirable in its approach to such problems.

## Meetings of Standing Committees

Sec. 6. To the extent practicable when the Legislature is in session, each standing committee shall conduct regular committee meetings in accordance with the Rules of Procedure and other requirements of its respective House of the Legislature. Each standing committee

shall meet at such other times as may be determined by the committee. When the Legislature is not in session, to the extent authorized by the respective Houses by Resolution, each committee shall have full power and authority to determine the times and places it shall meet. Each committee shall meet as often as necessary to transact effectively the business of such committee. Unless otherwise determined by the committee, all committee meetings shall be in Austin, but such committee may meet elsewhere within the State of Texas if authorized by Resolution of the House creating such committee and if deemed necessary by the committee for the orderly transaction of its business.

#### Special Committees

Sec. 7. Each House of the Legislature acting individually, or the two Houses acting jointly, shall have full power and authority to provide for the creation of special committees to perform such functions and to exercise such powers and responsibilities as shall be determined in the Resolution creating such committee. During the life of a special committee, it shall have and exercise the same powers and authority as are herein granted to standing committees, subject to such limitations as may be imposed in the Resolution creating such special committee, and shall have such other and additional powers and authority as may be delegated to it by the Resolution creating the committee, subject to the limitations of law.

#### General Investigating Committees

Sec. 8. (a) There is hereby authorized to be created by Resolution of the respective Houses, a General Investigating Committee of the Senate and a General Investigating Committee of the House of Representatives. Each Committee shall consist of five (5) members. The five (5) Senate members shall be appointed by the President of the Senate who shall also designate a Chairman, and the five (5) Representatives shall be appointed by the Speaker of the House of Representatives, who shall also designate a Chairman. All members shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the next Regular Session of the Legislature following their appointment. The five (5) Representatives heretofore appointed by the Speaker of the House of Representatives pursuant to House Simple Resolution No. 50 shall constitute the House General Investigating Committee for the Fifty-seventh Legislature, and the five (5) Senators to be appointed by the President of the Senate shall constitute the Senate General Investigating Committee for the Fifty-seventh Legislature, and each member of such Committees shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the Regular Session of the Fifty-eighth Legislature.

(b) If such Committees hereinabove authorized are created, the following provisions

shall apply to the General Investigating Committee of the Senate and to the General Investigating Committee of the House of Representatives, as the case may be, each of which is hereinafter referred to as the Committee.

(1) Each Committee may begin its work as soon as it desires after its members are appointed. The Committee shall elect from among its members a Vice-Chairman and a secretary. Said Committee shall meet, organize and promulgate the rules and procedure by which it shall function. It shall have full freedom to determine the times and places when and where it shall meet, both during the Regular Session, any Called Sessions, and during any interim between Sessions. Any vacancy on said Committee shall be filled in the same manner as the other members were appointed. The Committee shall have full authority to continue or initiate any and all inquiries and hearings into matters pertaining to the State Government and any agency or subdivision of Government within the State of Texas, the expenditure of public funds at any and all levels of government within the State, and all other matters and things considered by said Committee to be needed for the information of the Legislature or for the welfare and protection of the citizens of the State of Texas. A majority of the Committee shall constitute a quorum.

(2) Each Committee shall adopt its own rules of evidence and procedure and such other rules and regulations as may be necessary to govern the hearings and affairs of the Committee, which are not inconsistent with Section 13 of this Act. Joint Rules may be adopted for joint hearings of the Committees.

(3) The Committee shall keep a record of its proceedings, and it shall have the power to hold such meetings as it may deem necessary and at any place in the State of Texas. The Committee shall also have power to issue process to witnesses, at any place in this State, to compel their attendance, and the production of all books, records and instruments, to issue attachments where necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by either the Sergeant-at-Arms appointed by the said Committee or by any peace officer of this State; and to cite for contempt, and cause to be prosecuted for contempt, anyone disobeying the subpoenas or other process lawfully issued by it in the manner and according to the procedures provided in this Act and by any other provisions of General Law. The Chairman of the Committee shall issue, in the name of the Committee, such subpoenas as a majority of the Committee may direct. The Committee is hereby authorized to request the assistance of the State Auditor's De-

partment, the Texas Legislative Council, the Department of Public Safety, the Attorney General's Department and all other State agencies and officers, and it shall be the duty of said departments, agencies and officers to assist the Committee when requested to do so. The Committee shall have the power to inspect the records, documents and files of every State department, agency and officer, and of all municipal, county or other political subdivisions of the State, and to examine into their duties, responsibilities and activities.

(4) Witnesses attending proceedings of said Committee under process shall be allowed the same mileage and per diem as is allowed witnesses before any grand jury in this State. Their testimony shall be under oath and subject to the privileges of Article 1289 of Vernon's Penal Code of the State of Texas.

(5) Three (3) or more members of the Committee shall constitute a quorum for the transaction of business and the Chairman or other presiding officer of the Committee shall have power to administer oaths and affirmations.

(6) The Committee shall have authority to employ and compensate assistants to assist in any investigation, to assist in any audits, and to assist in any legal matters where, for any reason, it is necessary to obtain such services in addition to the services of the State Auditor, the Texas Legislative Council and Attorney General's Department, and the Department of Public Safety; and it may employ and compensate clerks, stenographers and other employees in order to conduct its investigations and hearings and to make proper records thereof. However, it is expressly provided that no employment or compensation shall be authorized until it has been first submitted to the Speaker of the House or the President of the Senate, as the case may be, and he has authorized it in writing.

(7) The Committee shall make such reports to the Members of the Legislature as it may deem necessary and appropriate.

(8) Members of the Committee shall be reimbursed for their actual and necessary expenses incurred while engaged in the work of the Committee and while traveling between their places of residence and the places where meetings of the Committee are held. Compensation of the Committee's employees, expenses incurred by members of the Committee, and all other expenses of the Committee shall be paid out of any appropriation for mileage and per diem and contingent expenses of the Legislature.

(c) Upon a majority affirmative vote of each Committee, the Committees may conduct hearings and inquiries jointly; otherwise each shall operate severally. Provided, however,

should a Committee conduct investigations without the active participation of the other, current liaison will be effected to the Chairman of the inactive Committee so as to fully inform of the nature and progress of the inquiry. In the event of joint inquiries or investigations the Chairman of the Senate Committee shall be Chairman of the Joint Committee and the Chairman of the House Committee shall be Vice-Chairman. Seven (7) members shall constitute a quorum of a Joint Committee.

#### Administering Oaths

Sec. 10. The President of the Senate, the Speaker of the House of Representatives, the Chairman or Acting Chairman of any standing or special committee of either House of the Legislature, or the Chairman or Acting Chairman of any Joint Committee created by the two Houses, shall have authority and is empowered to administer oaths to all witnesses offering testimony on any matter under consideration. Any Member of either House of the Legislature, when circumstances so require, shall have authority and is empowered to administer oaths to all witnesses offering testimony on any matter pending in either House of the Legislature of which he is a Member, or any committee thereof.

#### Oath Required

Sec. 11. All committees of the Legislature, or of either House thereof, whether standing or special, and whether created by a single House or by the joint action of both Houses, shall require all witnesses to give their testimony under oath, subject to the penalties of perjury as herein provided, unless such oath shall be waived by the committee.

#### Process for Witnesses

Sec. 12. Each committee of the Legislature, or of either House thereof, standing or special, when authorized by Resolution or by Rule of Procedure of the House or Houses creating such committee, shall have the power and authority to issue process to witnesses at any place in the State of Texas, to compel the attendance of such witnesses, and to compel the production of all books, records, documents and instruments as the committee shall require; and if necessary to obtain compliance with subpoenas and other process issued by the committee, each committee shall have the power to issue writs of attachment. All process issued by a committee may be addressed to and served by any Peace Officer of the State of Texas or any of its political subdivisions or may be served by a Sergeant-at-Arms appointed by such committee. The Chairman shall issue in the name of the committee such subpoenas and other process as the committee shall determine.

#### Refusal to Testify

Sec. 13. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Com-

mittee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, shall nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary, or otherwise. Any person testifying before the Legislature or any committee thereof shall have the right to counsel.

#### Contempt of the Legislature

Sec. 14. Every person who, having been summoned as a witness by the authority of either House of the Legislature, or by any committee of either House, or by any Joint Committee of both Houses, to give testimony or produce papers upon any matter under inquiry before either House, or any committee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the matter under inquiry, or refuses to produce any books, papers, records or documents, as required, when ordered to do so, shall be deemed guilty of a misdemeanor known as Contempt of the Legislature, and on conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) and by imprisonment in jail for not less than thirty (30) days nor more than twelve (12) months.

#### Prosecution for Contempt

Sec. 15. Whenever a witness summoned as mentioned in Section 12 hereof fails to appear to testify, or fails to produce any books, papers, records or documents, as required, or whenever any witness so summoned refuses to answer any questions pertinent to the subject under inquiry before either House of the Legislature, or any committee thereof, and the fact of such failure or failures is reported to either House while the Legislature is in session, or when the Legislature is not in session, a statement of facts constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, as the case may be, it shall be the duty of the said President of the Senate or the Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the Seal of the Senate or the House, as the case may be, to the District Attorney of Travis County, Texas, whose duty it

shall be to bring the matter before the Grand Jury for its action, and it shall further be the duty of said District Attorney to see that any indictment returned by the Grand Jury is prosecuted in the manner prescribed by law.

#### PerJury

Sec. 16. Every person appearing as a witness before either House of the Legislature, or any committee thereof, or any Joint Committee of the two Houses, and who testifies before such House or such Committee, as the case may be, by either written or verbal testimony, and who deliberately and willfully makes a false statement, when such testimony is given under oath or affirmation as authorized by law and as required by such House or such Committee, shall be deemed guilty of perjury, and on conviction thereof, shall be punished by imprisonment in the penitentiary not less than two (2) nor more than ten (10) years.

#### Fees to Witnesses

Sec. 17. Witnesses attending proceedings of either House of the Legislature, or any committee thereof, under process of such House or such committee, shall be allowed the same mileage and per diem as is allowed witnesses before any Grand Jury in the State of Texas, such mileage and such per diem to be paid from the Contingent Expense Fund of the respective House of the Legislature, or the Committee thereof, before whom such proceedings are pending.

#### State Agencies to Co-operate

Sec. 18. Each standing committee is hereby authorized and empowered to request the assistance, where needed in the discharge of its duties, of the State Auditor's Department, the Texas Legislative Council, the Texas Department of Public Safety, the Attorney General's Department, and all other State agencies, departments, and offices, and it shall be the duty of such departments, agencies and offices to assist each such Committee when requested to do so. Each Committee shall have the power to inspect the records, documents and files of every department, agency and office of the State, to the extent necessary to the discharge of its duties within the area of its jurisdiction.

#### Committee Staff

Sec. 19. Each House of the Legislature is hereby authorized to provide, from its Contingent Expense Fund, for necessary committee clerks, clerical assistance, and staff to each Committee created by such House.

#### Expenses of Committee

Sec. 20. Members of all committees of either House of the Legislature, or the Joint Committees of the two Houses, shall be reimbursed for their actual and necessary expenses incurred while engaged in the work of the Committee and while traveling between their places of residence and the places where meetings of such Committee are held. Such reimbursement to members of the Committee shall

be authorized only when the Legislature is not in session, unless otherwise directed by the House of the Legislature creating such Committee. All such expenses of the Committee and its members shall be paid from the appropriation for mileage and per diem and the contingent expenses of the Legislature. All such expenses shall be approved by the Chairman of the Committee and by the presiding officer of the respective House, before payment shall be authorized.

**Contingent Expenses**

Sec. 21. Each House of the Legislature is hereby authorized to provide for the contingent

expenses of its Members for the entire term of office for which they have been elected, and it is also authorized to appropriate such money as may be necessary to pay all salaries, per diem and other expenditures authorized by law. Provided, however, that the appropriation shall specify separate appropriations for the House of Representatives and the Senate, and the Comptroller shall keep the accounts separate and distinct and no money may be transferred from one account to the other except by law. [Acts 1961, 57th Leg., p. 654, ch. 303.]

## TITLE 88

### LIBEL

#### Article

- 5430. Definitions.
- 5431. Mitigation of Damages.
- 5432. Privileged Matters.
- 5433. Construction.
- 5433a. Radio or Television Broadcasting Station or Network; Limitation of Liability

#### Art. 5430. Definitions

A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury.

[Acts 1925, S.B. 84.]

#### Art. 5431. Mitigation of Damages

In any action for libel, in determining the extent and source of actual damage and in mitigation of exemplary or punitive damage, the defendant may give in evidence, if specially pleaded, all material facts and circumstances surrounding such claim of damage and the defense thereto, and also all facts and circumstances under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of, and may also give in evidence, if specially pleaded in mitigation of exemplary or punitive damage, the intention with which the libelous publication was made. The truth of the statement, or statements, in such publication shall be a defense to such action. [Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 121, ch. 80, § 1.]

#### Art. 5432. Privileged Matters

The publication of the following matters by any newspaper or periodical shall be deemed privileged and shall not be made the basis of any action for libel.

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of same when in the judgment of the court the ends of justice demand that the same should not be published and the court so orders, or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings,

including all reports of and proceedings in or before legislative committees and before each and all such committees heretofore appointed by the Legislature or either branch of the Legislature or hereafter to be appointed by such bodies or either of them and of any debate or statement in or before the Legislature or either branch thereof or any of its committees, and including also all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions supported from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district, city or county, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of the proceedings of public meetings, dealing with public purposes, including a fair, true and impartial account of statements and discussion in such meetings, and of other matters of public concern, transpiring and uttered at such public meetings.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information.

5. The privilege provided under Sections 1, 2, 3, and 4, of this article shall extend to any first publication of such privileged matter by any newspaper or periodical, and to subsequent publications thereof by it when published as a matter of public concern for general information; but any re-publication of such privileged matter, after the same has ceased to be a matter of such public concern, shall not be deemed privileged, and may be made the basis of an action for libel upon proof that such matter had ceased to be of such public concern and that same was published with actual malice.

[Acts 1925, S.B. 84; Acts 1927, 40th Leg., p. 121, ch. 80, § 2.]

#### Art. 5433. Construction

Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved.

[Acts 1925, S.B. 84.]

**Art. 5433a. Radio or Television Broadcasting Station or Network; Limitation of Liability**

The owners, licensees or operators of a radio or television broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part

of a radio or television broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

[Acts 1953, 53rd Leg., p. 506, ch. 184, § 1.]



## TITLE 89

# LIBRARY AND HISTORICAL COMMISSION

### Article

- 5434. Organization.
- 5435. Purpose; Powers and Duties of Commission; Director and Librarian.
- 5436. Powers and Duties.
- 5436a. State Plan for Library Services and Library Construction.
- 5437. Seal.
- 5438. Custody of Records.
- 5438a. Historical Relics.
- 5438b. Title to Relics.
- 5438c. Removal of Relics.
- 5438d. Admission Fees; State Property Under Control of Daughters of Confederacy and Daughters of Republic.
- 5439. Exchange of Records.
- 5439a. Photographic Reproductions as Public Records.
- 5440. Repealed.
- 5441. Duties of Librarian.
- 5441a. Records Management Division.
- 5441b. Disposition of Valueless Records.
- 5441c. Destruction of Worthless Records.
- 5441d. Preservation of Essential Records Act.
- 5442. Distribution of Publications.
- 5442a. Depository Libraries for State Documents.
- 5442b. Regional Historical Resource Depositories.
- 5443. Sale of Archives.
- 5444. Repealed.
- 5444a. Legislative Reference Library.
- 5444b. State Law Library.
- 5445. Assistants.
- 5446. Report to Governor.
- 5446a. Library Systems Act.

### Art. 5434. Organization

The Governor shall, by and with the advice and consent of the Senate, appoint six (6) persons who shall constitute the Texas Library and Historical Commission. Appointments shall be made for a term of six (6) years.

Members of the Commission holding office at the time of passage of this Act shall continue in office until the expiration of their present terms.

Upon the expiration of the terms of office of the two (2) members which expire in 1953, the Governor shall, by, and with the advice of the Senate, appoint three (3) persons as members of the Commission. The Governor shall designate one (1) of the appointees to serve a term of two (2) years to expire concurrent with the term of the present member of the Commission whose term of office expires in 1955.

The other two (2) appointees shall serve for six (6) years.

Thereafter all appointments shall be for a six-year term, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

The Commission shall be assigned suitable offices at the Capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive his actual expenses incurred in attending the meetings, and shall be paid a per diem as set out in the General Appropriations Act.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 726, ch. 283, § 1; Acts 1967, 60th Leg., p. 1755, ch. 661, § 1, eff. Aug. 28, 1967.]

### Art. 5435. Purpose; Powers and Duties of Commission; Director and Librarian

The appointed members of the Commission shall be responsible for the adoption of all policies, rules and regulations so as to aid and encourage libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation. The Commission shall appoint a Director and Librarian who shall perform all of the duties heretofore provided for the State Librarian, and all authority, rights and duties heretofore assigned by statute to the State Librarian are hereby transferred to and shall be performed by the Director and Librarian. He shall be the Executive and Administrative Officer of the Commission and shall discharge all administrative and executive functions of the Commission. He shall have had at least two years' training in library science or the equivalent thereof in library, teaching or research experience and shall have had at least two years of administrative experience in library, research or related fields. The Director and Librarian shall serve at the will of the Commission and shall give bond in the sum of Five Thousand Dollars (\$5,000) for the proper care of the State Library and its equipment. He shall be allowed his actual expenses when travelling in the service of the Commission on his sworn account showing such expenses in detail. The Director and Librarian shall appoint, subject to the approval of the Commission, an Assistant State Librarian, a State Archivist, and such other assistants and employees as are necessary for the maintenance of the Library and Archives of the State of Texas.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 1064, ch. 476, § 1.]

**Art. 5436. Powers and Duties**

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

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

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

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

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

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

The Texas Library and Historical Commission is authorized to adopt a state plan for improving public library services and for public library construction. The plan shall include county and municipal libraries. The Texas State Library shall prepare the plan for the commission, and shall administer the plan adopted by the commission. Money to be used may include that available from local, state, and federal sources, and will be administered according to local, state, and federal requirements. The state plan shall include a procedure by which county and municipal libraries may apply for money under the state plan and

a procedure for fair hearings for those applications that are refused money.

[Acts 1965, 59th Leg., p. 1, ch. 1, § 1, eff. Feb. 4, 1965.]

**Art. 5437. Seal**

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

[Acts 1925, S.B. 84.]

**Art. 5438. Custody of Records**

The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the Commission. The gallery of the portraits of the Presidents of the Republic and the Governors of this State constitutes a part of the State Library. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, shall constitute a part of the State Library, and shall be placed therein for the use of the public.

[Acts 1925, S.B. 84.]

**Art. 5438a. Historical Relics**

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

[Acts 1925, 39th Leg., ch. 146, p. 354, § 1.]

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

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

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

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

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

[Acts 1925, 39th Leg., ch. 146, p. 354, § 3.]

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

The Daughters of the Confederacy, Texas Division, and the Daughters of the Republic of Texas, are hereby authorized to charge admission fees to the general public to visit State property under their custody and control except the Alamo, and such organizations are au-

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

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

#### Art. 5439. Exchange of Records

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

[Acts 1925, S.B. 84.]

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

When any State official has had photographic reproductions (as defined in Article 5441a) made of any public records (as defined in Article 5441a) in his office, even though such records be current, he may designate such photographic reproductions as original records for all legal purposes and may thereupon transfer the records which have been replaced by the photographic reproductions to the State Librarian, who shall receipt therefor. The State Librarian with the consent of the State Auditor may dispose of transferred records by further transfer or by destruction. Furthermore, when such photographic reproductions have been designated as original records, then copies thereof, in any form, may be introduced in evidence when properly certified or authenticated according to law.

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

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

See, now, article 5435.

#### Art. 5441. Duties of Librarian

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

1. He shall record the proceedings of the Commission, keep an accurate account

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

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

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

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

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

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

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

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

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

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

#### Art. 5441a. Records Management Division

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

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

##### Definitions

Sec. 2. For the purpose of this Article:

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

"Public Records" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in the Article.

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

"Head of department or institution" shall mean the official or officials, whether appoin-

tive or elective, who has or have authority over the records of the department or institution involved.

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

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

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

Sec. 3. With the cooperation of the heads of the various departments and institutions the public records of such departments and institutions shall be surveyed, indexed and classified under the direction of the records management division. Furthermore, with the approval of the State Director and Librarian the head of any department or institution may destroy any public records in his custody which, in his opinion have no further legal, administrative or historical value, provided, however, that he shall first file application to do so with the State Director and Librarian, describing in such application the original purposes and contents of such public records, and provided further, that the approval of the State Auditor shall also be required with regard to the destruction of public records of a fiscal or financial nature. The head of any department or institution shall

(1) establish and maintain an active, continuing program for the economical and efficient management of the records of the agency;

(2) make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities; and

(3) submit to the Director, Records Management Division of the State Library, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been promulgated or received by the agency.

The head of each department and institution also shall submit lists of public records in his custody that do not have sufficient administrative, legal or fiscal value to warrant their retention, for disposal in conformity with the requirements of this Section. The head of each department or institution shall act as, or shall appoint an employee of his department or institution performing other administrative duties to act as, a records administrator of the department or institution. Such records administrator shall comply with the rules, regulations, standards and procedures issued by the Director of the Records Management Division.

## Photographic Reproductions

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

## Quality and Accuracy of Photographic Reproductions

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

## Private or Public Use of Photographic Reproductions

Sec. 6. The State Director and Librarian is hereby authorized to make photographic reproductions for private and public use on the following basis:

- (1) For official use of departments and institutions no charge shall be made;
- (2) for the official use of local units of government charge shall be made on a cost basis;
- (3) for copies of public records for private use charge shall be at a rate to be fixed by the State Director and Librarian in keeping with standard commercial rates.

All money received by the State Library in payment for charges for photographic reproduction shall be paid into the State Treasury.

## Report of State Auditor; Contents

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

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

[Acts 1947, 50th Leg., p. 945, ch. 403, § 1; Acts 1963, 58th Leg., p. 435, ch. 154, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 605, ch. 299, § 1.]

## Art. 5441b. Disposition of Valueless Records

Sec. 1. The State Librarian of the State of Texas is hereby authorized to transfer, destroy or otherwise dispose of any records of the State of Texas consigned by law to his custody that are more than ten (10) years old and which the State Librarian shall determine to be valueless, or of no further use, to the State of Texas as official records. Provided, how-

ever, none of such records shall be disposed of in any manner unless the State Comptroller, the State Auditor and the Attorney General of the State of Texas shall first have agreed with the State Librarian that the preservation of any such records are no longer necessary as evidence and will serve no useful purpose in the future efficient operation of the State Government. All such records disposed of, as agreed upon, shall be generally listed and referred to and such list shall be subscribed to by all of said Officials showing their consent to such disposition.

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

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

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

## Art. 5441c. Destruction of Worthless Records

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

Sec. 2. The State Auditor, Board of Barber Examiners, Board of Control, Board of Cosmetology, Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents of the State Teachers Colleges, Bureau of Labor Statistics, Comptroller, Court of Civil Appeals for the Third Supreme Judicial District, Governor's Office, Health Department, Insurance Commission, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission, Real Estate Commission, Secretary of State, State Securities Board, Teacher Retirement System, Texas Education Agency, Texas State Library, Texas Water Commission, and the Treasury Department shall examine all books, papers, correspondence and records of any kind belonging to each respective agency, dated prior to 1952, which are stored with the Records Management Division.

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

- (1) classify and index its own records;

(2) furnish the Records Management Division of the State Library and Historical Commission a copy of the index in which they shall list the records to be preserved;

(3) name a retention period on records which are to be stored for a definite time; and

(4) request destruction of worthless records and material in compliance with Article 5441a, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1965, 59th Leg., p. 1160, ch. 547, eff. Aug. 30, 1965.]

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

##### Purpose

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

##### Short Title

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

##### Definitions

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

(1) "essential record" means any written or graphic material made or received by any state agency in the conduct of the state's official business, which is filed or intended to be preserved permanently or for a definite period of time, as evidence of that business;

(2) "agency" means any state department, institution, board, or commission, whether executive, judicial, legislative, or eleemosynary in character;

(3) "departmental records supervisor" means the person or persons having authority over the records of the department involved;

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

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

##### Records Preservation Advisory Committee

Sec. 4. (a) A Records Preservation Advisory Committee is established to advise the

Records Preservation Officer and to perform other duties as this Act requires. The committee is composed of the State Librarian, Secretary of State, State Auditor, State Comptroller, Attorney General, or their delegated agents, the Secretary of the Senate and the Chief Clerk of the House of Representatives, all of whom serve as ex officio members of the committee. The committee shall work with and is a part of the Records Management Division of the State Library and Historical Commission.

(b) The State Librarian is the chairman of the committee.

(c) The committee shall:

(1) adopt rules for the conduct of its business;

(2) meet when called by the chairman; at least twice each year; and

(3) appoint consultants from time to time to obtain the best professional advice on the performance of its duties.

(d) The consultants shall serve without compensation, but shall be reimbursed for actual expenses incurred while performing their duties.

##### Records Preservation Officer

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

##### Bond

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

##### Essential State Records

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

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

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

##### Confidential Records

Sec. 8. When a state record is required by law to be treated in a confidential manner the departmental records supervisor shall so indicate by labeling such record. The Records Preservation Officer and his staff shall protect the confidential nature of any record so la-

beled. Any employee who fails in this responsibility shall be dismissed from his duties and shall not be permitted to hold another state appointment.

**Selection of Records**

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

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

- (1) inventory the state records in his custody or control;
- (2) submit to the Records Preservation Officer a report on the inventory containing, in addition to the information required by the rules and regulations, specific information showing which records are essential; and
- (3) review periodically his inventory and his report and, if necessary, revise his report so that it is current, accurate and complete.

**Preservation Duplicates**

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

**Use of Duplicate**

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

**Record Storage**

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

designated or customary record storage location.

**Removal From Storage; Temporary Use**

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

**Removal From Storage; Inspection**

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

**Program Review**

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

**Reports of Compliance**

Sec. 16. In the audit of the various state departments and agencies, the State Auditor shall report on the compliance of each state agency with all provisions of this Act.

[Acts 1965, 59th Leg., p. 1161, ch. 548, eff. Aug. 30, 1965.]

**Art. 5442. Distribution of Publications**

(a) On the requisition of the State Librarian therefor, the Board of Control shall cause to be printed and furnished to the State Library for distribution and exchange the following publications, or such additional number as said librarian shall request: 150 copies of all annual, biennial and special reports of state departments, boards and institutions, findings of all investigations, bulletins, circulars, laws issued as separates, and legislative manuals, and 150 copies of all other publications, except routine business forms and court reports. No accounts for such printing shall be approved and no warrants shall be issued therefor, until the Board of Control is furnished by the contract printer with the receipt of the Librarian for such publications.

(b) Each state agency, department, board and institution shall file with the State Library at least ten copies of any report filed with the United States Equal Employment Opportunity Commission, and the State Library shall file three copies of such reports with the State Legislative Library. The State Librarian is encouraged to distribute copies of such re-

ports in accordance with the provisions of section (a) above.

[Acts 1925, S.B. 84; Acts 1969, 61st Leg., p. 154, ch. 55, § 11, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1621, ch. 583, § 1, eff. June 15, 1973.]

#### Art. 5442a. Depository Libraries for State Documents

Sec. 1. The term "state document" as used in this Act means all publications of state agencies which the Texas State Library is authorized by Revised Civil Statutes, 1925, Article 5442, to acquire and distribute.

Sec. 2. The term "depository libraries" as used in this Act means the Texas State Library, the legislative reference library, libraries of state institutions of higher education, and other libraries so designated by the Texas Library and Historical Commission upon determination that such designations are necessary to provide adequate access to state documents.

Sec. 3. Each state agency shall furnish the Texas State Library or the legislative reference library with state documents in the quantity specified in Article 5442, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. State documents shall be made available to depository libraries under the direction of the Texas State Library.

Sec. 5. To facilitate distribution of state documents, each state agency shall furnish the Texas State Library with a list of state documents which it has issued during the preceding month, this list to be reproduced and distributed to all depository libraries and to such other agencies and institutions which request this list.

Sec. 6. Free use by the general public shall be a condition of depository privilege.

[Acts 1963, 58th Leg., p. 1133, ch. 438; Acts 1969, 61st Leg., p. 154, ch. 55, § 10, eff. Sept. 1, 1969.]

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

##### Definitions

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

(1) "Commission" means the Texas Library and Historical Commission.

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

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

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

##### Designation of Regional Depositories

Sec. 2. In order to provide for an orderly, uniform, state-wide system for the retention and preservation of historical resources on a

manageable basis and under professional care in the region of origin or interest, the Texas Library and Historical Commission is hereby authorized to designate the library of a state-supported institution of higher learning or a depository library, as that term is defined by Section 2, Chapter 438, Acts of the 58th Legislature, 1963, as amended (Article 5442a, Vernon's Texas Civil Statutes), to serve as a regional historical resources depository.

##### Acceptance of Gifts and Donations

Sec. 2A. (a) To further implement the establishment of regional historical resource depositories, the commission is authorized, without obligation to the state or the general revenue fund, to accept, on behalf of the state, lands and buildings deemed by the commission as suitable for regional historical resource depositories, and to accept cash or property donations designated by the donors for the purpose of constructing libraries and regional depositories. For these purposes, the commission may enter into such agreements with donors as it may deem advisable for the acceptance, designation, and construction of such regional depositories or combined library and depository centers, but such agreements may not create any financial obligation on behalf of the state.

(b) Such regional libraries and depositories, when so accepted and designated by the commission, shall be subject to the applicable terms and provisions of this Act, except that they shall be owned by the state and under the direct control and supervision of the commission. The commission may provide for local staffing and maintenance, and may enter into any cooperative agreements it deems advisable with any city, county, state institution, or other governmental entity. The commission may accept gifts of furniture, equipment, maps, paintings, records, manuscripts, museum pieces, or any other historical resource for placement in the depositories upon conditions agreed upon between the commission and the donor of such a gift.

(c) If cash is donated and accepted by the commission for the building, maintenance, supplementing, expanding, or staffing of any such regional depository, or combined library and regional depository, the commission is authorized to keep such funds in a separate bank depository designated by the commission and to use such funds for the purposes designated by the donors. Also, if personal or real property is specifically donated to, and accepted by, the commission for the purpose of sale or lease to provide funds for any of the purposes of this Act, the proceeds received therefrom shall be deposited and used in the same manner as provided above for cash donations. In converting such donated property to cash, the commission may execute bills of sale, leases, or deeds in consideration of the payment to the commission by the purchasers or lessees of such donated property of the reasonable market value thereof as determined in writing by a licensed



or professional appraiser. Such instruments of conveyance shall be authorized by written resolution of the commission and shall be signed by the chairman and attested to by the secretary.

(d) Subject to the terms of any donation given under this section, and unless otherwise provided by the donor, the commission, in acting for the state with respect to any donated property, shall have all of the applicable powers of trustees under the Texas Trust Act, as amended (Articles 7425b-1, et seq., Vernon's Texas Civil Statutes), with the state as beneficiary and owner of the remainder of such donated property. The commission shall annually report to the governor and the legislature all such donations, transactions, agreements, and special accounts, and same shall be subject to audit by the state auditor.

#### Area Served; Resource Preservation, Etc.

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

#### Transfer or Loan of Resources

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

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

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

#### Offer, Acceptance and Loan of Resources

Sec. 5. (a) County commissioners, other custodians of public records, and private parties may offer, and the librarian of a depository may accept, historical resources for preservation and retention in the depository.

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

#### Removal of Resources

Sec. 6. Nothing in this Act shall be construed so as to prevent the commission from removing historical resources placed by or in the name of the commission in depositories if the commission determines that such removal would insure the safety or availability of the historical resources.

#### Rules and Regulations; Notice and Hearing; Publication

Sec. 7. (a) Proposed initial rules and regulations necessary to the administration of the

system of depositories shall be formulated by the State Librarian.

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

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

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

#### Duties of State Librarian

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

#### Appropriations

Sec. 9. The legislature may appropriate funds to the Texas Library and Historical Commission sufficient for the purpose of carrying out the provisions of this Act.

#### Conflicting Laws Repealed

Sec. 10. All laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

[Acts 1971, 62nd Leg., p. 1731, ch. 503, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 254, ch. 122, § 1, eff. May 18, 1973.]

Section 2 of the 1973 amendatory act provided: "If any word, phrase, clause, provision, sentence, or part of this Act shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remainder of this Act. The legislature hereby declares that it would have passed the remainder of this Act if it had known that any such word, phrase, clause, provision, sentence, or part thereof would be declared invalid or unconstitutional."

#### Art. 5443. Sale of Archives

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

[Acts 1925, S.B. 84.]

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

See, now, art. 5444a.

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

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

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

**Transfer of Functions and Duties**

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

**Board; Membership and Expenses**

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

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

**Contents of Library; Aid to Legislature**

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

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

Sec. 5. The board shall appoint a director who shall serve for a period of one year from September 1st of each year, unless sooner discharged by said board for any reason. The salary of the director shall be fixed by the board. The director may, with the approval of the board, employ professional and clerical personnel at salaries fixed by the board.

4 West's Tex.Stats. & Codes—72

**Transfer of Property; Inventory**

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

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

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

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

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

**Transfer of Appropriations**

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

**Rules and Regulations**

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

[Acts 1969, 61st Leg., p. 154, ch. 55, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1112, ch. 243, § 1, eff. May 17, 1971.]

**Art. 5444b. State Law Library****Definitions**

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

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

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

Sec. 2. The functions and duties now performed by the library of the Supreme Court

under Article 1722, Revised Civil Statutes of Texas, 1925, are transferred to the State Law Library, which is established as an independent agency of the State.

**Board; Members or Representatives; Compensation**

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

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

**Legal Reference Facility; Use**

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

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

**Director; Staff Personnel; Salaries**

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

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

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

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

Sec. 7. During the biennium ending August 31, 1973, the Comptroller of Public Accounts is hereby authorized and directed to set up an account to be known as the State Law Library Fund and is authorized and directed to transfer into such account from time to time moneys appropriated to the Supreme Court for the purpose of operating and administering the Supreme Court Library. For the purpose of operating and administering the library for the Court of Criminal Appeals, the Comptroller is

authorized and directed to transfer into such account from time to time such amounts as may be necessary for such court's appropriation for consumable supplies and materials or other designation for its library purposes. For the purpose of operating and administering the library for the Attorney General, the Comptroller is authorized and directed to transfer into such account from time to time such amounts as may be necessary from the appropriation to the Attorney General's office for consumable supplies and materials or other designation for its library purposes. Such transfers may be made on the direction of the Chief Justice of the Supreme Court, the Presiding Judge of the Court of Criminal Appeals, and the Attorney General, respectively. Moneys in the State Law Library Fund may be expended by the board or its duly authorized representative for the purpose of maintaining, operating, and keeping up to date the State Law Library. Moneys appropriated for use of the libraries of the Supreme Court, Court of Criminal Appeals, and the Attorney General's office during the present biennium shall not be affected by this Act.

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

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

**Rules and Regulations**

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

[Acts 1971, 62nd Leg., p. 2359, ch. 722, eff. June 8, 1971.]

**Art. 5445. Assistants**

The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian. Said assistant shall give bond to the Governor in the sum of three thousand dollars and shall take the official oath. Other assistants in the State Library shall be appointed by the Commission and be divided into four grades: Heads of departments, library assistants, clerks and laborers. Heads of departments and library assistants shall be required to have technical library training; and heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training

equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping. Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them. The archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; provided, that the archivist shall not be required to have technical library school training or any library experience.

[Acts 1925, S.B. 84.]

#### Art. 5446. Report to Governor

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

[Acts 1925, S.B. 84.]

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

##### CHAPTER A. GENERAL PROVISIONS

###### Short Title

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

###### Definitions

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

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

(2) "Commission" means the Texas State Library and Historical Commission;

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

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

(5) "state library system" means a network of library systems, interrelated by contract, for the purpose of organizing li-

brary resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state;

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

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

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

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

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

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

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

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

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

##### CHAPTER B. STATE LIBRARY SYSTEM

###### Establishment

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

###### Advisory Board

Sec. 4. (a) The Commission shall appoint an advisory board of five librarians qualified by training, experience, and interest to advise

the Commission on the policy to be followed in the application of the provisions of this Act.

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

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

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

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

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

#### Plan of Service

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

### CHAPTER C. MAJOR RESOURCE SYSTEM

#### Authority to Establish

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

#### Membership in System

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

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another system, or partially transferred to another system by the Commission with the approval of the appropriate governing bodies of the libraries comprising the system.

#### Operation and Management

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

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

(c) On petition of 10 percent of the qualified electors in the latest general election of a county, city, town, or village within the major resource system service area, the governing body of that political subdivision shall call an

election to vote on the question of whether or not the political subdivision shall establish contractual relationships with the major resource system.

(d) The governing body of a major resource center and the Commission may enter into contracts and agreements with the governing bodies of other libraries, including but not limited to other public libraries, school libraries and media centers, academic libraries, technical information and research libraries, or systems of such libraries, to provide specialized resources and services to the major resource system in effecting the purposes of this Act.

#### Withdrawal From Major Resource System

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

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

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

#### Advisory Council

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

(b) The governing body of each member library of the system shall elect or appoint a representative for the purpose of electing council members. The representatives shall meet within 10 days following their selection and shall elect the initial council from their group. Thereafter, the representatives in an annual meeting shall elect members of their group to fill council vacancies arising due to expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. The major resource center shall always have one member on the council.

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

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

(e) The council shall meet at least once a year. Other meetings may be held as often as

is required to transact necessary business. A majority of the council membership constitutes a quorum. The council shall report business transacted at each meeting to all member libraries of the system.

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

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

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

(2) recommend policies appropriate to services needed;

(3) evaluate services received;

(4) counsel with administrative personnel; and

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

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

#### CHAPTER D. CONSTITUENTS OF MAJOR RESOURCE SYSTEMS

##### Major Resource Center

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

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

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

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

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

##### Area Library

Sec. 12. (a) The Commission may designate area libraries within each major resource system service area to serve the surrounding area with library services for which contracts

are made with participating libraries. Area libraries may be designated only from existing public libraries and on the basis of criteria approved by the Commission and agreed to by the governing body of the library involved.

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

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

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

##### Community Library

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

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

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

#### CHAPTER E. STATE GRANTS-IN-AID TO LIBRARIES

##### Establishment

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

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

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

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

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

(4) equalization grants, to help libraries in communities with relatively limited tax-

able resources to meet criteria for major resource system membership.

#### Rules and Regulations

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

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

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

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

#### Administration

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

#### Funding

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

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

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

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

(e) Exclusive of the expenditure of funds for administrative expenses as provided in Section 17(a) of this Act, all funds appropriated pursuant to Section 14 of this Act shall be apportioned among the major resource systems on the following basis:

Twenty-five percent of such funds shall be apportioned equally to the major resource systems and the remaining seventy-five percent shall be apportioned to them on a per capita basis determined by the last decennial census.

## CHAPTER F. OTHER PROVISIONS

### Severability

Sec. 18. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

### Emergency Clause

Sec. 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

[Acts 1969, 61st Leg., p. 61, ch. 24, eff. Sept. 1, 1969.]

# TITLE 90

## LIENS

Chapter	Article
1. Judgment Liens .....	5447
2. Mechanics, Contractors and Material Men	5452
3. Oil and Mineral Property .....	5473
4. Liens of Railroad Laborers .....	5480
5. Farm, Factory and Store Operatives .....	5483
6. Chattel Mortgages [Repealed] .....	5489
6A. Uniform Trusts Receipts Act [Repealed]	5499a-51
7. Other Liens .....	5500

### CHAPTER ONE. JUDGMENT LIENS

Article
5447. Abstracts of Judgments.
5448. Recording Judgments.
5449. Lien of Judgment.
5450. Satisfaction of Judgment.
5451. Federal Court Judgments.

#### Art. 5447. Abstracts of Judgments

Each clerk of a court, when the person in whose favor a judgment was rendered, his agent, attorney or assignee, applies therefor, shall make out, certify under his hand and official seal, and deliver to such applicant upon the payment of the fee allowed by law, an abstract of such judgment showing:

- (1) The names of the plaintiff and of the defendant in such judgment;
- (2) The birthdate and driver's license number of the defendant, if available to the clerk of the court;
- (3) The number of the suit in which the judgment was rendered;
- (4) Defendant's address if shown in the suit in which judgment is rendered, and if not, the nature of citation and the date and place citation is served;
- (5) The date when such judgment was rendered;
- (6) The amount for which the judgment was rendered and balance due thereon; and
- (7) The rate of interest specified in the judgment.

Each justice of the peace shall also make and deliver an abstract of any judgment rendered in his court in the manner herein provided, certified under his hand.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 2419, ch. 768, § 1, eff. Aug. 30, 1971.]

#### Repeal

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

#### Art. 5448. Recording Judgments

Each county clerk shall keep a well bound book called the "judgment record," and he shall immediately file and therein record all properly authenticated abstracts of judgment when presented to him for record, noting therein the day and hour of such record. He shall at the same time enter it upon the alphabetical index to such judgment record, showing the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded. He shall leave a space at the foot of each such abstract for the entry of credits upon and satisfaction of such judgment, and shall enter the same when properly shown.

[Acts 1925, S.B. 84.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5449. Lien of Judgment

When any judgment has been so recorded and indexed, whether it be the first or a subsequent abstract of said judgment, it shall, from the date of such record and index, if said judgment is not then dormant, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire, situated in said county. Said lien shall continue for ten (10) years from the date of such record and index, except that if during said ten-year period the judgment becomes dormant said lien shall thereupon cease to exist, provided, that the lien of any judgment so recorded and indexed prior to the effective date of this Act, if then valid, shall continue for ten (10) years from the effective date of this Act, except that if during said ten (10) years the judgment becomes dormant said lien shall thereupon cease to exist.

[Acts 1925, S.B. 84; Acts 1935, 44th Leg., p. 685, ch. 291, § 1; Acts 1937, 45th Leg., p. 553, ch. 273, § 1.]

#### Art. 5450. Satisfaction of Judgment

Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy



of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the court in which rendered, the date and amount of the judgment, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record as required for deeds.

[Acts 1925, S.B. 84.]

#### Art. 5451. Federal Court Judgments

An abstract of a judgment rendered in this State by any United States Court may be recorded and indexed in the same manner and with like force and effect as provided for judgments of the Courts of this State, upon the certificates of the clerks of such United States courts.

[Acts 1925, S.B. 84.]

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

#### Article

- 5452. Lien Prescribed.
- 5452-1. Sham Contracts With Building and Improvement Contractors.
- 5453. Securing Lien.
- 5454. Owner to Pay Undisputed Claim.
- 5455. Form of Claim.
- 5456. Notice and Mailing Requirement.
- 5457. Repealed.
- 5458. What Included on Property in City and Country.
- 5459. Priority of Lien.
- 5460. Lien on Homestead.
- 5461. Repealed.
- 5462. Repealed.
- 5463. Owner Authorized to Retain Funds, Contractor to Defend Suits.
- 5464. Preference Lien.
- 5465. Repealed.
- 5466. Relinquishment Entered.
- 5467. Accrual of Indebtedness.
- 5468. Equality of Liens.
- 5469. Lien Claimants Fund With Preference to Mechanics.
- 5470. Release.
- 5471. Separate Sales.
- 5472. Requisites of Sale.
- 5472a. Lien for Material Furnished Public Contractor; Notice.
- 5472b. Retention of Funds.
- 5472b-1. Bond for Release of Lien.
- 5472c. Bond to Indemnify Against Liens.
- 5472d. Bond to Pay Liens or Claims.
- 5472e. Construction Payments and Loan Receipts as Trust Funds.

#### Art. 5452. Lien Prescribed

1. Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or subcontractor who may labor, specially fabricate material, or furnish labor or material: (a) for the construction or repair of any house,

building or improvement whatever; (b) for the construction or repair of levees or embankments to be erected for the reclamation of overflow lands along any river or creek; (c) or for the construction or repair of any railroad: within this state under or by virtue of a contract with the owner, owners, or his or their agent, trustee, receiver, contractor, contractors, or with any subcontractor; upon complying with the provisions of this Chapter shall have a lien on such house, building, fixtures, improvements, land reclaimed from overflow, or railroad and all of its properties, and shall have a lien on the lot or lots of land necessarily connected therewith, or reclaimed thereby, to secure payment: (a) for the labor done or material furnished or both for such construction or repair; (b) for specially fabricated material even though such material has not been delivered or incorporated into such construction or repair, less its fair salvage value. The word "improvement" as used herein shall be construed so as to also include: abutting sidewalks and streets and utilities therein; clearing, grubbing, draining or fencing of land; wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water; all pumps, siphons, and windmills or other machinery or apparatus used for raising water for stock, domestic use or for irrigation purposes; and the planting of orchard trees, grubbing out of orchards and replacing trees, and pruning said orchard trees. If the abutting sidewalks and streets and utilities therein are public property, such lien shall be applicable to the property of the owner and shall be exclusive of the public property.

2. For the purposes of this Act, the following definitions shall apply:

a. Labor is to be construed to mean labor used in the direct prosecution of the work.

b. The words "material," "furnish material," or "material furnished" as used in this Act are to be construed to mean any part or all of the following:

(1) Material, machinery, fixtures or tools incorporated in the work, or consumed in the direct prosecution of the work, or ordered and delivered for such incorporation or such consumption.

(2) Rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment, used in the direct prosecution of the work at the site of the construction or repair, or reasonably required and delivered for such use.

(3) Power, water, fuel and lubricants, when such items have been consumed or ordered and delivered for consumption in the direct prosecution of the work.

c. Specially fabricated material is defined as material fabricated for use as a

component part of the construction or repair so as to be reasonably unsuitable for use elsewhere, even though such material may not be delivered.

d. The word "work" as that term is used in Chapter 2 of Title 90, is to be construed to mean any construction or repair, or any part thereof, which is performed pursuant to an original contract, as that term is defined herein. The term "contract price," as that term is used in Chapter 2 of Title 90, is to be construed to mean the cost to the owner for any construction or repair, or any part thereof, which is performed pursuant to an original contract, as that term is defined herein.

e. An original contractor is defined as one contracting with an owner, directly or through his agent; and an original contract is defined as an agreement to which an owner is a party, either directly or by implication of law. There may be one or more original contractors.

f. A subcontractor is any person or persons, firm or corporation who has furnished labor or materials or both as defined above to fulfill an obligation to an original contractor or to a subcontractor to perform all or part of the work required by an original contract. A subcontractor shall have a right to claim a lien, but the amount of such lien claim, together with the sum of the previous payments received by claimant on such subcontract, shall not exceed that proportion of the total subcontract price which the sum of the labor performed, materials furnished, specially fabricated materials, reasonable overhead costs incurred and proportionate profit margins bears to the total subcontract price.

g. Retainage as referred to in this Act (other than the statutory retainage prescribed by Article 5469) is defined as any amount representing any part of the contract payment or payments which are not required to be paid to the claimant within the month next following each month in which the labor was performed, or material furnished, or both; or specially fabricated material was delivered. No lien for retainage as here defined shall be valid to an extent greater than the amounts specified to be retained in the contract or contracts between the claimant and the original contractor or between the claimant and a subcontractor.

[Acts 1925, S.B. 84; Acts 1951, 52nd Leg., p. 593, ch. 348, § 1; Acts 1961, 57th Leg., p. 863, ch. 382, § 1; Acts 1973, 63rd Leg., p. 213, ch. 96, § 1, eff. May 16, 1973.]

Sections 2 to 9 of the act of 1961 amended various articles of this chapter.

Section 10 of the act added article 5472d.

Sections 11 and 12 of the act provided:

"Sec. 11. Articles 5457, 5461, 5462, and 5465 of Title 90 of the Revised Civil Statutes of Texas, 1925, are hereby repealed; however, the rights, duties and obligations of parties arising under or incidental to contracts between

owners and original contractors, subcontracts thereunder and labor done, or materials furnished pursuant thereto, when the contract between the owner and the original contractor shall have been made before the effective date of this Act shall continue to be governed by the law heretofore applicable.

"Sec. 12. The provisions of this Act shall apply only to all contracts between owners and original contractors, subcontracts thereunder and labor done, materials furnished or materials specially fabricated, pursuant thereto, when the contract between the owner and the original contractor shall have been made on or after the effective date of this Act."

Section 2 of the 1973 Act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, and in the event of such conflict, the provisions hereof shall prevail."

## Art. 5452-1. Sham Contracts With Building and Improvement Contractors

### Sham Contracts, Perfecting Liens

1. Whenever any owner of real property shall enter into any contract with a corporation for the construction or repair of any house, building or improvements thereon, and said owner can effectively control the corporation with whom such contract is made, through the ownership of voting stock therein, interlocking directorships or otherwise; or, when any owner of real property shall enter into such a contract with any natural person or corporation for such construction or repair, and it shall be proved by a preponderance of the evidence that such contract was made without good faith intention on the part of the parties thereto that it was to be performed by said person or corporation, then in either such event, any person, firm or corporation who, under a direct contractual relationship with said person or corporation and who may labor, specially fabricate material, or furnish labor or material to be used in the prosecution of the work under such contract shall be deemed to be in a direct contractual relationship with the owner and may perfect his lien against the property in the same manner as any other original contractor.

### False Statements

2. (a) It is unlawful for any
- (1) person, as owner of real property, or his agent;
  - (2) or any agent, director, officer or employee of any corporation, firm or association, as owner of real property;
  - (3) or any agent, director, officer or employee of any corporation in direct contractual relationship with any owner of real property when such owner can effectively control the corporation through the ownership of voting stock therein, interlocking directorship or otherwise; or
  - (4) any person or any agent, director, officer or employee of any corporation when such person or corporation is in direct contractual relationship with any owner of real property when such contractual relationship was entered into without good faith or without intention that the contract was to be performed by such per-

son or corporation to knowingly with the intent to defraud make or cause to be made to any person, firm, association or corporation a false written statement to the effect that any bill, charge, account, or claim for labor, material, or specially fabricated material furnished to or performed for the construction or repair of any house, building, or improvement on such real property has been paid or satisfied in full or in part, and to procure upon the faith thereof money or other thing of value in connection with said construction or repair. The word owner as used herein shall not include any person, firm, or corporation having or claiming a security interest only.

(b) A person who violates the provisions of Subparagraph (a) of this Paragraph 2 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000 nor less than \$100 or by imprisonment in the county jail for not more than one year or by both.

[Acts 1965, 59th Leg., p. 368, ch. 175, § 1.]

#### Art. 5453. Securing Lien

The lien provided for in Article 5452 may be fixed and secured in the following manner:

1. Every original contractor, not later than one hundred twenty (120) days, and every other person or firm, lumber dealer or corporation, artisan, laborer, mechanic or subcontractor who may be entitled to a lien under this Act, not later than ninety (90) days, after the indebtedness accrues as defined hereinafter in Article 5467, shall file his affidavit claiming a lien, to be recorded in a book kept by the county clerk for that purpose in the office of the county clerk of the county in which such property is located or through or into which such railroad may extend, and he shall send to the owner by certified or registered mail, addressed to his last known business or residence address, two (2) copies of such affidavit claiming a lien. The county clerk shall index and cross-index such affidavit in the names of the claimant, the original contractor and the owner. So long as the claim for a lien has been filed with the county clerk, failure of the county clerk to comply with these instructions shall not invalidate the lien.

2. If the claimant for such lien is other than an original contractor, such claim shall not be valid or enforceable unless the claimant shall also have complied with the applicable notice requirements hereafter set forth which shall be conditions precedent to the validity of such claims:

a. If any agreement providing for retainage exists between the claimant and the original contractor or between the claimant and any subcontractor, whereby the claimant is to labor, or furnish labor or material, or both, or to specially fabricate material, such

claimant may give written notice to the owner not later than thirty-six (36) days after the tenth (10th) day of the month next following the making of such agreement, that there has been agreed upon between the claimant and such contractor, or such subcontractor, such retention of funds. A copy of such notice shall also be given in like manner to the original contractor in instances where the agreement is between claimant and a subcontractor. The notice shall be sent by certified or registered mail addressed to the owner, and when required by this paragraph, to the original contractor, at their last known business or residence address. The notice shall state the sum to be retained, the due date or dates, if known, and shall indicate generally the nature of such agreement. If a retainage agreement consists in whole or in part of an obligation to furnish specially fabricated materials and the notice or notices have been given in accordance with this subparagraph, it shall not be necessary for a claimant to give a notice or notices under subparagraph 2-c of this Article. When claimant has complied with this subparagraph, no further notice or notices shall be required of him as to such retainages except the notice or notices specified in paragraph 1 of this Article; provided, however, the claimant may, at his option, elect to give the notice or notices specified in subparagraph 2-b of this Article at the time and in the manner therein required in lieu of or in addition to any notices under this subparagraph.

b. Excepting instances of retainages for which notices have been given in accordance with the preceding subparagraph, the claimant shall give the applicable notice or notices described, as follows:

(1) Where the claim consists of a lien claim arising from a debt incurred by a subcontractor, the claimant shall give written notice of the unpaid balance of such claim to the original contractor not later than thirty-six (36) days after the tenth (10th) day of the month next following each month in which claimant's labor was done or performed in whole or in part or his material delivered in whole or in part; and claimant shall give a like notice to owner not later than ninety (90) days after the tenth (10th) day of the month next following each month in which the claimant's labor was done or performed in whole or in part or his material delivered in whole or in part.

(2) Where the claim consists of a lien claim arising from a debt incurred by the original contractor, no such notice need be given to the contractor but notice to the owner, as prescribed in paragraph 2b(1) of this Article will be sufficient.

Such notices shall be sent by certified or registered mail, addressed to the owner, and where required by this Article to the original contractor, at their last known business or residence address. A copy of the statement or billing in the usual and customary form shall suffice as a notice under this subparagraph; provided, however, if such statement or billing is to be effective to authorize an owner to retain funds for the payment of such claim as provided in Article 5463 of this Act, it shall contain or be accompanied by some form of statement to an owner to the effect that if the bill remains unpaid he may be personally liable and his property subjected to a lien unless he withholds payments from the contractor for the payment of such statement or unless the bill is otherwise paid or settled.

c. If the basis of the claim is to be for a specially fabricated item or items, as described in Article 5452 hereof, the claimant may give written notice to the owner not later than thirty-six (36) days after the tenth (10th) day of the month next following the receipt and acceptance of an order for such specially fabricated material, that such an order has been received and accepted, together with the price thereof; provided, however, that in instances where the indebtedness for such items were incurred by one other than an original contractor, a copy of such written notice shall also be given within the same time to the original contractor. Further notice or notices shall be given by a claimant under this subparagraph, if and when a delivery or deliveries have been made or if and when the normal delivery time on the job has passed, such further notice or notices to be in accordance with the terms and provisions of subparagraph 2-b of this Article; provided, nevertheless, if claimant has failed to give notice or notices under this subparagraph but delivers specially fabricated material, under an order accepted by him, then as to such delivered items, his claim shall be valid, provided he gives the notice or notices required in subparagraph 2-b of this Article. A delivery of specially fabricated materials, for the purpose of such notices shall constitute a delivery of materials under subpara-

graph 2-b of this Article. Such notices shall be sent by certified or registered mail addressed to the owner, and where required by this Article to the original contractor, at their last known business or residence address.

3. A claimant desiring to demand payment of his claim by the owner may accompany his notice of such claim with the demand for payment as prescribed by Article 5454.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 478, ch. 224, § 1; Acts 1961, 57th Leg., p. 863, ch. 382, § 2.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5454. Owner to Pay Undisputed Claim

Whenever an owner has withheld a payment or payments from the original contractor pursuant to the provisions of Article 5463 of this Act, and claimant shall have given written notice to the owner that his claim or any portion thereof, either has accrued under the terms of Article 5467 or is past due according to the agreement between the parties; claimant may make written demand of the owner, a copy of which shall be sent to the contractor, for payment by owner of such claim and if the contractor shall not, within thirty (30) days after said demand is received by contractor notify the owner in writing that the contractor intends to dispute such claim, the contractor shall be considered as having assented to the demand which shall thereupon be paid by the owner. The demand herein provided for may accompany the original notice of nonpayment or of a past-due claim; may be stamped or written on the face of said notice in legible form; or may be subsequently given by claimant, provided, however, that no such demand shall be made after the time has expired within which the claimant may secure his lien under this Act unless a lien for such demand has been secured.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 3.]

#### Art. 5455. Form of Claim

An affidavit claiming a lien filed for record by any one claiming the benefit of this Act shall be signed by the claimant or by some person on his behalf and shall contain in substance the following:

a. A sworn statement of his claim, including the amount thereof. A copy of the written agreement or contract, if any, may be attached at the option of the claimant.

b. The name of the owner or reputed owner, if known.

c. A general statement of the kind of work done or materials furnished by him, or both. It shall not be necessary to set forth the individual items of work done or material furnished or specially fabricated. Any abbreviations or symbols customary in the trade may be used.

d. The name of the person by whom claimant was employed, or to whom he furnished the materials or labor, and the name of the original contractor.

e. A description of the property sought to be charged with the lien legally sufficient for identification.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 4.]

#### Art. 5456. Notice and Mailing Requirement

1. Where any written notice or communication is required or permitted to be given by this Act, it may be delivered in person to the party or his agent and such delivery shall constitute compliance irrespective of other methods of notice or communications herein provided.

2. In instances where notice or mailing is sent by certified or registered mail, the deposit of such notice or mailing in the United States Mails, in the form required, shall, except where it is specified in this Act that the notice shall be received by the person to whom it is directed, constitute full compliance with such notice or mailing provisions. Whenever any written notice required or permitted by this Act has actually been received by the person entitled to receive the same, the method by which said notice was delivered shall be immaterial.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 5.]

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

See, now, art. 5455.

#### Art. 5458. What Included on Property in City and Country

If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property.

[Acts 1925, S.B. 84.]

#### Art. 5459. Priority of Lien

Sec. 1. The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad have been put, or labor per-

formed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for.

Sec. 2. The time of the inception of the lien, as used in this article, shall mean the occurrence of the earliest of any one of the following events:

(a) The actual commencement of construction of the improvements or the delivery of material to the land upon which the improvements are to be located for use thereon for which the lien herein provided results, provided such commencement or material is actually visible from inspection of the land upon which the improvements are being made; or

(b) If the agreement for the construction of the improvements or any part thereof or the agreement to perform labor or furnish material or provide specially fabricated material in connection with such construction resulting in the lien herein provided for is written, the recording of such agreement in the Mechanic's Lien Records of the county in which said land is located; or

(c) If the agreement for the construction of the improvements or any part thereof or the agreement to perform labor or furnish material or provide specially fabricated material in connection with such construction resulting in the lien herein provided for is oral, the recording of an affidavit in the Mechanic's Lien Records of the county in which said land is located stating that the lien claimant has entered into an agreement with the owner of such property or with the owner's contractor or subcontractor for construction of improvements thereon, which affidavit shall contain a description of the land, the name and address of the lien claimant, the name and address of the person with whom the lien claimant has contracted for such improvements, labor, materials, or specially fabricated materials, and a general description of the improvements contracted for.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 1082, ch. 231, § 1, eff. May 17, 1971.]

#### Art. 5460. Lien on Homestead

When material is furnished, labor performed, or improvements as defined in this title are made, or when erections or repairs are made upon homesteads, if the owner thereof is a married man or woman, then to fix and secure the lien upon the same it shall be necessary for the person or persons who furnish the material or perform the labor, before such material is furnished or such labor is performed, to make

and enter into a contract in writing, setting forth the terms thereof, which shall be signed by both the husband and wife. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well bound book to be kept for that purpose. When such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder.

[Acts 1925, S.B. 84; Acts 1967, 60th Leg., p. 741, ch. 309, § 5, eff. Jan. 1, 1968; Acts 1969, 61st Leg., p. 2707, ch. 888, § 3, eff. Jan. 1, 1970.]

**Art. 5461. Repealed by Acts 1961, 57th Leg., p. 863, ch. 382, § 11, eff. Aug. 28, 1961**

See. now, art. 5453.

**Art. 5462. Repealed by Acts 1961, 57th Leg., p. 863, ch. 382, § 11, eff. Aug. 28, 1961**

See, now, art. 5453.

**Art. 5463. Owner Authorized to Retain Funds, Contractor to Defend Suits**

1. When notices of claims sent under the provisions of paragraph 2 of Article 5453 of this Act are received by the owner, he shall be authorized to retain in his hands the amount or amounts of money necessary to pay said claims from payments or part-payments to the original contractor for labor, or material or both, or for specially fabricated materials which has been performed or furnished by a claimant and to which such notices are applicable, at times and under circumstances, as follows:

a. Under notices of claims sent under subparagraph 2-a of Article 5453, immediately upon receipt of a copy of the claimant's affidavit claiming a lien prepared by claimant pursuant to said notices as required by paragraph 1, of Article 5453.

b. Under notices of claims sent under subparagraph 2-b of Article 5453, immediately upon receipt of such notices.

c. Under notices of claims sent under subparagraph 2-c of Article 5453, immediately upon receipt of the additional notices under subparagraph 2-b of said Article which are required to be sent upon delivery, or if and when the normal delivery time on the job has passed. Such funds shall be retained, unless payment is made under Article 5454, or the claim otherwise settled or determined, until the time for securing a lien under this Act has passed; or if a lien affidavit has been filed, until the lien claim has been satisfied and released.

2. When an affidavit claiming a lien is filed by any one other than the original contractor under the provisions of this Act, the original contractor shall defend the action brought thereupon at his own expense. In case

of judgment against the owner or his property upon the lien, he shall be entitled to deduct from the amount due the contractor the amount of said judgment and costs; and, if he shall have settled with the contractor in full, he shall be entitled to recover from the contractor any amount so paid for which the contractor was originally liable. The owner shall in no case be required to pay, nor his property be liable for, any money, other than that required to be retained by him under the provisions of Article 5469 hereof, that he may have paid to the contractor before he is authorized under this Article to retain the money. If the notices prescribed in Article 5453 have been received by the owner and claimant's lien has been secured in accordance with Article 5453 and the claim or any part thereof is reduced to final judgment, the owner shall be required to pay, and his property shall be liable for, any money that he may have paid to the contractor after he is authorized to retain such money by virtue of this Article, as well as any money he is required to retain by the provisions of Article 5469 hereof.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 6, eff. Aug. 28, 1961.]

**Art. 5464. Preference Lien**

All sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder.

[Acts 1925, S.B. 84.]

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

See, now, art. 5454.

**Art. 5466. Relinquishment Entered**

When the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnished by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men.

[Acts 1925, S.B. 84.]

**Art. 5467. Accrual of Indebtedness**

1. For the purpose of this Act, indebtedness, except for retainages, shall be deemed to have accrued as follows:

a. For an original contractor immediately upon any material breach or termination of the original contract by the owner, or on the tenth (10th) day of the month next following the month in which the original contract has been completed, finally settled, or abandoned.

b. For an artisan, laborer or mechanic who has labored at an hourly, daily or

weekly rate of pay for an original contractor or subcontractor, at the end of the calendar week during which the labor was performed.

c. For a subcontractor, or any one other than those specified in paragraphs 1-a, 1-b and 1-d, of this Article, who has furnished labor, material, or both, to an original contractor or to a subcontractor, the indebtedness shall be deemed to have accrued on the tenth (10th) day of the month next following the last month in which the labor was performed or the material furnished.

d. In the case of specially fabricated material, the indebtedness shall be deemed to have accrued on the tenth (10th) day of the month next following the last month in which delivery of such materials was made; or the tenth (10th) day of the month next following the last month in which delivery of the last of such material would normally have been required at the job site; or immediately upon any material breach or termination of the original contract by the owner or contractor, or of the subcontractor under which the specially fabricated material was to be furnished.

2. For the purposes of this Act, claims for lien for retainages, as defined in paragraph 2-g of Article 5452 hereof, shall be deemed to have accrued on the tenth (10th) day of the month next following the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, or abandoned.

3. Accrual of indebtedness shall be referable, as to any given claim, to the contract concerning which the particular claim is made and under the terms of which labor was performed or labor or material or both were furnished, or undelivered specially fabricated material is to be furnished.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 7.]

#### Art. 5468. Equality of Lien

Except as provided in Article 5469, the liens as perfected under this Act shall be upon an equal footing without reference to date of filing the account or affidavit claiming a lien. In case of foreclosure, if the proceeds of the sale of any property described in any account or lien are insufficient to discharge all the liens against the same, such proceeds shall be paid pro rata on the respective liens perfected under this Act and upon which suit is brought. Nothing in this Act shall in any manner affect the contract between the owner and original contractor as to the amount, manner or time of payment of said contract price.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 8.]

#### Art. 5469. Lien Claimants Fund With Preference to Mechanics

Whenever work is done whereby a lien or liens may be claimed under Article 5452 here-

of, it shall be the duty of the owner, his agent, trustee, or receiver to retain in his hands during the progress of such work and for thirty (30) days after the work is completed, to secure the payment of artisans and mechanics who perform labor or service, and to secure the payment of any other claimants furnishing material, or material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of such work ten per cent (10%) of the contract price to the owner, his agent, trustee, or receiver of such work, or ten per cent (10%) of the value of same, measured by the proportion that the work done bears to the work to be done, using the contract price or, if none, the reasonable value of the completed work as a basis of computing value. All persons who shall send notices in the time and manner required by this Act and shall file affidavits claiming a lien not later than thirty (30) days after the work is completed shall have a lien upon the fund so retained by the owner, his agent, trustee, or receiver; with preference to artisans and mechanics, who shall share ratably therein to the extent of their claims; with any remaining balance to be shared ratably among all other participating claimants. If the owner, his agent, trustee, or receiver refuses or fails to comply with the provisions of this Article, then all claimants complying with the provisions of this Act shall share ratably among themselves, with preference to artisans and mechanics as above specified, liens at least to the extent of the aforesaid fund of ten per cent (10%) which should have been retained, as against the house, building, structure, fixture, or improvement and all of its properties, and on the lot or lots of land necessarily connected therewith, to secure payment of such liens.

[Acts 1925, S.B. 84; Acts 1961, 57th Leg., p. 863, ch. 382, § 9.]

#### Art. 5470. Release

All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien.

[Acts 1925, S.B. 84.]

#### Art. 5471. Separate Sales

When the house, building, improvement, or any piece of the railroad's property is sold separately, the officer making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of purchase.

[Acts 1925, S.B. 84.]

#### Art. 5472. Requisites of Sale

Every sale must be upon judgment rendered by some court of competent jurisdiction fore-

closing such lien and ordering sale of such property.

[Acts 1925, S.B. 84.]

**Art. 5472a. Lien for Material Furnished Public Contractor; Notice**

Any person, firm, corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery, or labor to any contractor under a prime contract where such prime contract does not exceed the sum of Two Thousand Dollars (\$2,000) for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants due or to become due to such contractor for such improvements provided such person, firm, corporation, trust estate, or stock association shall before any payment is made to such contractor, notify in writing the officials of the state, county, town, or municipality whose duty it is to pay such contractor of his claim, such written notice to provide and be given within the prescribed time as follows:

(a) Such notice to be given by certified or registered mail, with a copy to the contractor at his last known business address, or at his residence, and given within thirty (30) days after the 10th of the month next following each month in which labor, material, apparatus, fixtures, or machinery were furnished for such lien is claimed.

(b) Such notice, whether based on a written or oral agreement shall state the amount claimed, the name of the party to whom such was delivered or for whom it was performed, with dates and place of delivery or performance and describing the same in such manner as to reasonably identify said material, apparatus, fixtures, machinery, or labor and the amount due therefor, and identify the project where material was delivered or labor performed.

(c) Such notice shall be accompanied by a statement under oath stating that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

(d) Any person who shall file a willfully false and fraudulent notice and statement shall be subject to the penalties for false swearing.

[Acts 1925, 39th Leg., ch. 17, p. 44, § 1; Acts 1959, 56th Leg., p. 155, ch. 93, § 2.]

**Art. 5472b. Retention of Funds**

That no public official, when so notified in writing, shall pay all of said moneys, bonds or warrants, due said contractor, but shall retain enough of said moneys, bonds or warrants to pay said claim, in case it is established by judgment in a court of proper jurisdiction.

[Acts 1925, 39th Leg., ch. 17, p. 44, § 2.]

**Art. 5472b-1. Bond for Release of Lien**

Sec. 1. That whenever any claim or claims shall be filed attempting to fix a lien, secured or claimed by any instrument filed under the

provisions of Chapter 17, of the General Laws of the State of Texas, passed by the Thirty-ninth Legislature in Regular Session,<sup>1</sup> that the contractor or contractors against whom such claim or claims are made, may file a bond with the officials of the State, county, town or municipality whose duty it is to pay the moneys, bonds or warrants to such contractor or contractors. Said bond shall be double the amount of the claims filed, and shall be payable to the claimant or claimants. It shall be executed by the party filing same as principal, and by a corporate surety authorized under the laws of Texas to execute such bond as surety, and shall be conditioned substantially that the principal and surety will pay to the obligees named, or their assigns, the amount of the claim or claims, or such portion or portions thereof as may be proved to have been liens, under the terms of Chapter 17, General Laws of the State of Texas, passed by the Regular Session of the Thirty-ninth Legislature. The filing of said bond and its approval by the proper official of the State, county, town or municipality, shall release and discharge all liens fixed or attempted to be fixed by the filing of said claim or claims, and the official or officials whose duty it is to pay the moneys, bonds or warrants shall pay or deliver the same to the contractor or contractors or their assigns. Said official shall send by registered mail an exact copy of said bond to all claimants.

Sec. 2. At any time within six months from the date of filing of said surety bond, the party making or holding such claim or claims may sue upon such bond, but no action shall be brought on such bond after the expiration of such period. One action upon said bond shall not exhaust the remedy thereon, but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court and in any jurisdiction. If any claimant or claimants in an action establish the fact that they were entitled to a lien under the provisions of Chapter 17 of the General Laws of the State of Texas, passed at the Regular Session of the Thirty-ninth Legislature, and shall recover judgment for not less than the full amount for which claim was made, the court shall fix a reasonable attorney's fee in favor of the claimant or claimants, which shall be taxed as part of the costs in the case. The bond provided in Section One of this Act shall also be conditioned that the principal and surety will pay all court costs adjudged against the principal in actions brought by claimant or claimants thereon.

[Acts 1929, 41st Leg., 2nd C.S., p. 154, ch. 78.]

<sup>1</sup> Articles 5472a, 5472b.

**Art. 5472c. Bond to Indemnify Against Liens**

Sec. 1. Whenever any lien or liens, other than liens granted by written contracts of the owners of property, shall be fixed or attempted to be fixed, secured or claimed by any instrument filed of record under the provisions of



Chapter 2, of Title 90 of the Revised Civil Statutes of 1925, then the owner of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed or either of them, may file a bond with the County Clerk of the County in which the property is located as herein provided. Such bond shall describe the property on which lien or liens are claimed, shall refer to the lien or liens claimed in manner sufficient to identify them and shall be in double the amount of the claimed lien or liens referred to and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing same as principal and by a corporate surety authorized under the Laws of Texas, to execute such bonds as surety and shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.

Sec. 2. Upon the filing of such bond, the County Clerk shall issue a notice thereof to all obligees named therein. Such notice shall have attached thereto a copy of the bond. Such notice may be served upon each of such obligees by having a copy thereof delivered to him by any person competent to make oath thereof. The original notice shall be returned into the office of the County Clerk issuing same and the person making service of any copies thereof shall make oath on the back thereof showing on whom and on what date such copies were served.

Sec. 3. Such bond, when filed, and such notice, when issued, and returned together with the return thereon shall be recorded by the County Clerk in the Mechanic's Lien Records, and any purchaser or lender may rely upon the record of such bond, notice and return in acquiring any interest in said property and shall absolutely be protected thereby.

Sec. 4. No action shall be brought or maintained in any court to establish, enforce or foreclose any lien or claim of lien referred to in such bond unless same shall be brought within thirty days after the service of notice thereof as herein provided. After such 30 days and at any time within one year from the date of such service, the party making or holding such claim of lien may sue upon such bond but no action shall be brought upon such bond after the expiration of such period. One action upon said bonds shall not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.

Sec. 4a. In case the lien holder shall recover in a suit upon his lien or in a suit upon the bond he shall be entitled to recover in addition to his debt, a reasonable attorney's fee.

[Acts 1929, 41st Leg., p. 452, ch. 211.]

### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

### Art. 5472d. Bond to Pay Liens or Claims

1. Whenever a written contract exists between the owner and an original contractor, and if such contractor shall have furnished a bond in favor of the owner in a penal sum not less than the total of the original contract amount, executed by the original contractor as principal and a corporate surety authorized to do business in the State of Texas, conditioned for the prompt payment of all labor, subcontracts, materials, and specially fabricated materials, as defined in Article 5452 hereof, and normal and usual extras not to exceed fifteen per cent (15%) of the contract price, and approved by the owner and filed in the office of the county clerk as herein provided, such payment bond shall inure solely to all claimants either giving and filing the applicable notices and claims under Article 5453, or making claims in the manner provided in paragraph 4 of this Article. A claim or claim rights under the bond may be assigned.

2. Such bond shall have the written approval of the owner endorsed thereon, and shall be filed together with the written contract between the owner and the original contractor, or a true copy thereof, with the county clerk of the county wherein the owner's property or any part thereof is situated on which the construction or repair is being performed, or is to be performed; provided, however, it shall not be necessary to file and record the plans, specifications and general conditions of such contract whether or not such plans, specifications and general conditions are referred to in said contract.

3. The county clerk shall record such bond and place the contract on file in his office. He shall index and cross-index both in the names of the original contractor and the owner in a bound book to be designated "Bond to Pay Liens or Claims." The county clerk shall furnish a copy of said bond and contract to any person requesting same upon payment of a reasonable fee therefor, and a copy of such bond and contract duly certified to by said county clerk shall constitute prima facie evidence of the contents, execution, delivery and filing of the originals in all courts of this State or in the United States.

4. A claim to be enforceable against the bond may be perfected either in the manner prescribed for fixing and securing a lien by Article 5453 hereof, or in the following manner:

- a. By giving to the original contractor all applicable notices of claims required by

Article 5453; and, in addition thereto, by giving to the corporate surety, in lieu of to the owner, all notices therein required to be given to the owner; provided, however, the following notices need not be given:

(1) Notices to the surety under subparagraph 2-c of Article 5453 of acceptance of an order for specially fabricated materials.

(2) Notices to the surety under subparagraph 2-a of Article 5453, unless the claimant has a direct contractual relationship with the original contractor and the retainage agreed upon is in excess of ten per cent (10%) of the contract between the claimant and the original contractor.

It shall not be necessary, under this Article, that a claim be filed with the county clerk or that an affidavit accompany any claim or notice.

b. The time and manner of giving notices for claims under subparagraph 4-a of this Article shall be conditions of a valid claim thereunder; however, as to content of the notices, all that is required is a fair notice of the amount and nature of the claim asserted.

5. If any notices are received by the owner or a lien is fixed and secured as provided in Article 5453 hereof, the owner shall mail to the surety on the aforesaid bond a copy of all notices received by him; provided, however, failure of the owner to send such surety copies of such notices shall not relieve the surety of any liability under the bond if claimant has complied with the provisions of this Act, nor shall such failure impose any liability on the owner.

6. Every claimant whose claim remains unpaid sixty (60) days after compliance with the provisions of paragraph 4 of this Article may file suit in the county where the bond and contract were filed and recorded against the principal and surety on such bond, jointly or severally, for the amount of his claim and for court costs. Claimant may also recover reasonable attorneys fees if a recovery is made under the bond. No suit may be instituted on such bond after the expiration of fourteen (14) months from the date of his compliance with paragraph 4 of this Article.

7. In all cases where bonds have been filed in accordance with this Article, no suits shall be filed against the owner nor against his property, and any purchaser, lender or other person acquiring any interest in said property shall be entitled to rely upon the record of such bond and contract on file as constituting payment of all claims and liens for labor, or subcontracts, or materials or specially fabricated materials, as if he were the owner who approved, accepted and endorsed the bond; and the owner shall be relieved of all obligations under Articles 5454, 5463 and 5469 hereof. If the valid claims against a bond are in excess of

the penal sum of the bond, each claimant shall be entitled to share pro rata in such penal sum.

8. Any bond which is either furnished and filed in attempted compliance with this Article or which by its express terms evidences its intent to comply with this Article shall in either event be construed to effectuate such intention and all rights and remedies on such bond shall be enforceable in the same manner and under the same conditions and limitations as the bond provided for in this Article.

[Acts 1961, 57th Leg., p. 863, ch. 382, § 10.]

### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

### Art. 5472e. Construction Payments and Loan Receipts as Trust Funds

#### Construction Payments and Loan Receipts Declared Trust Funds

Sec. 1. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property; provided, however, that moneys paid to a contractor or subcontractor or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead of said contractor, subcontractor, or owner, directly related to such construction contract. The contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction.

#### Wrongful Disbursement, Use or Retention of Trust Funds

Sec. 2. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, contractors, subcontractors, or materialmen, incurred or to be incurred in connection with the construction

and improvements, for which said funds were received, shall be deemed to have misapplied said Trust Funds. Misapplication of Trust Funds hereunder, under the value of \$250, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding \$500, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of \$250 or over shall be punished by confinement in the Department of Corrections for a period not exceeding ten years.

**State's Election as to Other Offense**

Sec. 3. Where Trust Funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

**Closing Agents, Lending Institutions, and Construction Funds Covered by Payment Bond Exempt**

Sec. 4. This Act shall have no application to any bank, savings and loan association or other lender or to any title company or other closing agent in connection with any transaction to which this Act is applicable. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

**Severability Clause**

Sec. 5. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

**Saving Clause**

Sec. 6. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

**Texas Trust Act Inapplicable**

Sec. 7. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provisions of the Texas Trust Act.

[Acts 1967, 60th Leg., p. 770, ch. 323, eff. Aug. 28, 1967.]

**CHAPTER THREE. OIL AND MINERAL PROPERTY**

**Article**

- 5473. Contractor's Lien.
- 5474. Sub-contractor's Lien.
- 5475. Priority of Lien.
- 5476. Proceedings to Enforce Lien.
- 5476a. Securing Lien; Contents of Affidavit.

**Article**

- 5476b. Furnishing Under a Single Contract.
- 5476c. Notice to Owner That Lien Claimed.
- 5476d. Forfeiture of Leasehold Estate; Failure of Equitable or Other Interest to Ripen into Legal Title; Effect on Lien.
- 5477. Sale or Removal of Property.
- 5478. Extent of Liability of Owner.
- 5479. Remedy Cumulative.

**Art. 5473. Contractor's Lien**

Any person, corporation, firm, association, partnership, artisan, materialman, laborer or mechanic who shall, under contract, expressed or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipeline or oil pipeline, or the owner of any oil or gas pipeline right-of-way, or with the trustee, agent or receiver of any such owner, perform labor, furnish or haul materials, machinery or supplies used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipeline, shall have a lien on the whole of such land or leasehold interest therein, or oil pipeline, or gas pipeline, including the right-of-way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials, machinery and supplies so furnished or hauled, and upon all other materials, machinery and supplies owned by such owner and used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry or oil or gas pipeline, and upon said oil well, gas well, water well, oil or gas pipeline, mine or quarry for which the same are furnished or hauled, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipeline, leasehold interest, and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipeline and right-of-way therefor, for which said materials, machinery or supplies were furnished or hauled or labor performed. Provided, that if labor, supplies, machinery or materials are furnished to or hauled for a leaseholder, the lien hereby created shall not attach to the underlying fee title to the land.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 477, ch. 223, § 1; Acts 1957, 55th Leg., p. 482, ch. 231, § 1.]

**Art. 5474. Sub-contractor's Lien**

Any person, corporation, firm, association, partnership or materialman who shall furnish or haul such machinery, material or supplies to a contractor or subcontractor, or any person who shall perform such labor under a subcontract with a contractor, or who as an artisan or day laborer in the employ of such contractor or subcontractor shall perform any such labor, shall have a lien upon all such property or interest described in the preceding article, including right-of-way, for which said material and supplies were furnished or hauled and labor performed, in the same manner and to the same extent as the original contractor, for the

amount due him for material furnished or for such hauling or labor performed.

[Acts 1925, S.B. 84; Acts 1929, 41st Leg., p. 477, ch. 223, § 2.]

#### Art. 5475. Priority of Lien

The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided, however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected thereby, and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created.

[Acts 1925, S.B. 84.]

#### Art. 5476. Proceedings to Enforce Lien

Liens herein created shall be enforced within the same time and in the same manner as provided in the preceding Chapter. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lien holder may within ninety (90) days thereafter file an itemized inventory of the property so removed, showing the amount due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Article 5473.

[Acts 1925, S.B. 84; Acts 1953, 53rd Leg., p. 363, ch. 89, § 1; Acts 1957, 55th Leg., p. 482, ch. 231, § 2.]

#### Art. 5476a. Securing Lien; Contents of Affidavit

Every original contractor, journeyman, day laborer, or other person, within six (6) months after the indebtedness accrues, shall file in the office of the County Clerk of the county where the property is situated, to be recorded in a book kept by the County Clerk for that purpose, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates of performance or furnishing, the name of the owner of the land, mine or quarry, gas, oil or mineral leasehold interest, gas pipeline or oil pipeline, or oil or gas pipeline right-of-way, if known, the name of the claimant and his mailing address, a description of the land, mine or quarry, gas, oil or mineral leasehold interest, gas pipeline or oil pipeline, or oil or gas pipeline right-of-way, and if the claimant be a claimant under Article 5474, the name of the person for whom the labor was performed or materials or service furnished together with a statement that the claimant has given to the owner, his agent or representative

or receiver, notice in writing as required by Article 5476c.

[Acts 1953, 53rd Leg., p. 363, ch. 89, § 2; Acts 1957, 55th Leg., p. 482, ch. 231, § 3.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5476b. Furnishing Under a Single Contract

When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material or services are furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material or services; and all materials or services furnished by any person upon the same land, mine or quarry, gas, oil or mineral leasehold interest, gas pipeline or oil pipeline, or oil and gas pipeline right-of-way, shall for the purposes of this Act be considered as having been furnished under a single contract regardless of whether or not the same was furnished at different times or on separate orders, provided that no more than six (6) months shall have elapsed between the date of furnishing of such material and services and the date on which materials or services are next furnished.

[Acts 1953, 53rd Leg., p. 363, ch. 89, § 2; Acts 1957, 55th Leg., p. 482, ch. 231, § 4.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

#### Art. 5476c. Notice to Owner That Lien Claimed

Any person claiming a lien under Article 5474 shall, at least ten (10) days prior to the filing of his statement of lien as provided for in Article 5476a, furnish the owner with written notice that a lien is claimed, the amount thereof, the name of the person from whom the same is due and a description of the land, mine or quarry, gas, oil or mineral leasehold interest, gas pipeline or oil pipeline, or oil or gas pipeline right-of-way; and thereafter said owner shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. No owner shall be liable to any such claimant for any amount in excess of the amount still owing

to the original contractor at the time of receipt of such notice.

[Acts 1957, 55th Leg., p. 482, ch. 231, § 5.]

**Art. 5476d. Forfeiture of Leasehold Estate; Failure of Equitable or Other Interest to Ripen Into Legal Title; Effect on Lien**

If a lien provided for in this Chapter attaches to a leasehold estate, forfeiture of such estate shall not impair any such lien as to material, machinery, supplies and the specific improvement located thereon and to which said lien attached prior to forfeiture; provided same are not permanently attached to the land and any damages to the land caused by the removal of such property therefrom is paid to the owner of the land. If a lien provided for in this Chapter attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any such lien as to material, machinery, supplies and the specific improvement located thereon and to which said lien attached prior to such failure.

[Acts 1957, 55th Leg., p. 482, ch. 231, § 5.]

**Art. 5477. Sale or Removal of Property**

When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land, nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas or oil pipe line, nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in case of any violation of the provisions of this article, the said lienholder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not.

[Acts 1925, S.B. 84.]

**Art. 5478. Extent of Liability of Owner**

Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed.

[Acts 1925, S.B. 84.]

**Art. 5479. Remedy Cumulative**

The provisions of this law shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies now given them by law, and the pro-

visions of this law shall be cumulative of the present lien laws.

[Acts 1925, S.B. 84.]

**CHAPTER FOUR. LIENS OF RAILROAD LABORERS**

**Article**

- 5480. Lien Prescribed.
- 5481. Enforcement.
- 5482. Venue.

**Art. 5480. Lien Prescribed**

All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall have a lien prior to all others upon such railroad and its equipments for the amount due them for personal services, or for the use of tools or teams. Such lien shall cease to be operative in twelve months after its creation, if no steps are sooner taken to enforce it.

[Acts 1925, S.B. 84.]

**Art. 5481. Enforcement**

In all suits for wages due by a railroad company for such labor, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor, or subcontractor or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, the court having jurisdiction shall try the same, render judgment for the amount of wages found to be due, and adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court.

[Acts 1925, S.B. 84.]

**Art. 5482. Venue**

Such suits may be brought in any county in this State where such labor was performed, or in which the cause of action or part thereof accrued or in the county in which the principal office of such railroad company is situated.

[Acts 1925, S.B. 84.]

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

**Article**

- 5483. Lien Prescribed.
- 5484. Newspaper Office Employees.
- 5485. Payment of Wages.
- 5486. Liens, How Fixed.
- 5487. Right of Assignment.
- 5488. Duration of Lien.

**Art. 5483. Lien Prescribed**

Whenever any clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarryman, common laborer, farm hand, male or female, may labor or perform any service in any office, store, hotel, rooming house, boarding house, restaurant, cafe, shop, factory, mine, quarry or mill of any character, or perform any service in the cutting, preparation, hauling, handling, or transporting to any mill or other point for sale, manufacture or other disposition, logs or timber, or perform any service upon any wagon, cart, tram, or railroad, or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm or corporation, or his, her, or their agent, receiver or trustee, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor or that may be used or useful by such person or persons or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his or their agent or agents, receiver or receivers, trustee or trustees; provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1257, ch. 473, § 1.]

**Art. 5484. Newspaper Office Employees**

Whenever any newspaper worker in the editorial or reportorial department of any newspaper, publication or periodical, whether daily or otherwise, also any solicitor, clerk or other employee, in the advertising or business office of any newspaper publication or periodical, whether daily or otherwise, shall labor or perform any service in any of the departments or offices of such newspaper or periodical, under or by virtue of any contracts or agreements, written or verbal, with any person, employer, firm or corporation, or his, her or their agent, receiver or trustee, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employee shall have a first lien upon all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or

things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service, which may be owned by, or in possession of the aforesaid employer, person, firm, corporation, or his, her or their agent, receiver or trustee.

[Acts 1925, S.B. 84.]

**Art. 5485. Payment of Wages**

Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States.

[Acts 1925, S.B. 84.]

**Art. 5486. Liens, How Fixed**

Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, farm hand, artisan, craftsman, operative, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her, or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty (30) days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this Article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this Article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed.

[Acts 1925, S.B. 84; Acts 1937, 45th Leg., p. 1257, ch. 473, § 2.]

**Repeal**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

**Art. 5487. Right of Assignment**

Any party entitled to such lien may transfer or assign his rights hereunder, and his assignee or assignees shall have the same rights and privileges as are conferred upon him.

[Acts 1925, S.B. 84.]

**Art. 5488. Duration of Lien**

The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit is brought within said time to enforce said lien.

[Acts 1925, S.B. 84.]

**CHAPTER SIX. CHATTEL MORTGAGES  
[REPEALED]**

**Article**

5489 to 5499a. Repealed.  
5499a-1 to 5499a-50. Reserved.

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

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

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

**Arts. 5499a-1 to 5499a-50. Reserved for Future Legislation**

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

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

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

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

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

**CHAPTER SEVEN. OTHER LIENS**

**Article**

- 5500. Lien on Vessels.
- 5501. Stock Breeder's Lien.
- 5502. Livery Stables, etc.
- 5503. Possessory Lien.
- 5504. Sale of Property.
- 5505. Unclaimed Proceeds.
- 5506. Other Liens Not Affected.
- 5506a. Hospital or Clinic's Lien for Services on Cause of Action of Persons Injured.
- 5506b. Lien for Repairing, Altering, Dyeing, Cleaning, or Pressing, Wearing Apparel.
- 5506c. Repealed.

**Art. 5500. Lien on Vessels**

Sec. 1. Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this State, shall have a lien on such vessel, her tackle, apparel, furniture and freight money for the security and payment of the same. The provisions of this Article shall not be construed to alter or affect in any way the General Law regulating the liens of seamen on foreign vessels.

Sec. 2. Every Navigation District or Port, deep-water or otherwise, situated within the territorial limits of the State of Texas, which may furnish supplies or materials, or do repairs or labor, or to whom charges may accrue for wharfage, dockage, port charges, pilotage, storage, harbor fees, mooring fees, crane hire, or for any other facility or service, charges for which are specified in its official published Port Tariff, for or on account of any domestic vessel owned in whole or in part in this State, shall have a maritime lien on such vessel, her tackle, apparel, furniture and freight money, which may be enforced by suit in rem, for the security and payment of the same, and it shall not be necessary to allege or prove that credit was given to the vessel.

Sec. 3. The following persons shall be presumed to have authority from the owner to procure repairs, supplies, materials, labor, and to subject the vessel to and to incur the charges specified in Section 3 hereof: the managing owner, ship's husband, master, local agent, or any person to whom the management of the vessel is entrusted at the port of supply. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Sec. 4. The provisions of Sections 2 and 3 of this Act shall not be construed to alter or affect in any way the General Maritime Law regulating liens of seamen or liens on foreign vessels or any Federal Maritime Act regulating liens on foreign or domestic vessels; it being the intention of this Act to create liens in favor of Navigation Districts and Ports in those cases of domestic vessels where maritime liens

are not created by either the General Maritime Law or any Federal Maritime Act.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 1120, ch. 574.]

#### Art. 5501. Stock Breeder's Lien

The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar to secure the payment for the amount due such owner or keeper for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. Said lien shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth.

[Acts 1925, S.B. 84.]

#### Art. 5502. Livery Stables, etc.

Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage.

[Acts 1925, S.B. 84.]

#### Art. 5503. Possessory Lien

(a) Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material by any carpenter, mechanic, artisan, or other workman in this State, such carpenter, mechanic, artisan, or other workman is authorized to retain possession of said article, implement, utensil, or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan, or other workman shall retain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full.

(b) In the event that a mechanic or other workman shall relinquish possession of a motor vehicle due to the acceptance or receipt of any check, draft, or written order for the payment of the indebtedness due thereon, and in the event that payment is stopped on such check,

draft, or written order, the possessory lien established by the preceding paragraph (a) shall not be deemed to be released or relinquished, and the person to whom said lien has accrued shall be entitled to possession of said motor vehicle until the indebtedness due thereon shall have been paid. This paragraph (b) shall not be applicable to a bona fide purchaser of such motor vehicle subsequent to any stop payment order.

(c) In the event of a lawsuit relating to possession of a motor vehicle and the indebtedness due thereon a Court, in its discretion, may award reasonable attorney's fees to the prevailing party.

[Acts 1925, S.B. 84; Acts 1971, 62nd Leg., p. 2441, ch. 784, art. II, § 1, eff. Aug. 30, 1971.]

#### Art. 5504. Sale of Property

When possession of any of the property embraced in Articles 5502 and 5503 has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell.

[Acts 1925, S.B. 84; Acts 1965, 59th Leg., p. 715, ch. 337, § 1, eff. June 9, 1965.]

#### Art. 5505. Unclaimed Proceeds

If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the State or from the county in which such repairing was done, or such property was so held, the person so holding said property shall pay the balance to the county treasurer of the county in which said property is held and take his receipt therefor. Whenever such balance shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was sold, and shall be applied as any other county fund or money of such county is applied or used.

[Acts 1925, S.B. 84.]

#### Art. 5506. Other Liens Not Affected

Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute



of this State, or any other lien not treated of<sup>1</sup> under this title.

[Acts 1925, S.B. 84.]

<sup>1</sup> So in 1925 Revision.

**Art. 5506a. Hospital or Clinic's Lien for Services on Cause of Action of Persons Injured**

**Right to Lien**

Sec. 1. Every association, individual, corporation, or other institution maintaining a hospital or clinic rendering hospital services in the State of Texas shall be entitled to a lien upon any and all rights of action, suits, claims, counter claims, or demands of any persons admitted to any hospital and receiving treatment, care, and maintenance therein, on account of any personal injuries received in any accident as the result of the alleged negligence of any other person or firm or corporation or joint stock association, his, its, or their agent, servant or employee, which any such injured person may or shall have, assert, or maintain against any such other person or firm or corporation or joint stock association for damages on account of such injuries, for the amount of the charges of such hospital or clinic for such treatment, care and maintenance as may have been given to the injured persons. Provided the lien provided for herein shall not exist or attach unless the injured person is received in a hospital within seventy-two (72) hours after the happening of the accident causing the injury, in which case both the admitting hospital and any hospital to which such injured person may be transferred from the admitting hospital for subsequent treatments of the same injuries for which he was originally admitted shall be entitled to such lien.

**Lien to Attach to Judgment or Orders in Actions or Proceedings**

Sec. 2. The lien of any such hospital shall also attach to any verdict, report, decision, decree, award, judgment, or final order made or rendered in any action or proceeding, in any court in Texas, or any public board or bureau in any suit, action or proceeding brought by such injured persons, by any person entitled thereto in case of death of such injured person against any other person or corporation or joint stock association for the recovery of damages or compensation on account of injuries received in any such accident, as well as the proceeds of any settlement thereof, or the settlement of any such claim or demand effected by any such injured person or other person entitled thereto with any other person or firm or corporation or joint stock association whose negligence is claimed or alleged to have been the cause of said accident.

**Release Ineffectual as Against Claims; Exceptions as to Liens**

Sec. 3. No release of any claim or demand on account of any such injuries, or in respect of any such verdict, report, decision, decree, award, judgment, or final order, made and rendered, as hereinbefore mentioned, executed by

any such injured person, or by any person entitled thereto, shall be valid or effectual between the parties thereto or otherwise, unless prior to the execution and delivery thereof, all such charges of any such hospital or institution or clinic, furnishing hospital services, which has filed its, his, or their lien as hereinafter provided, shall have been paid in full, or to the extent of a full and true consideration paid and given to the injured person by the other party or parties to such release named therein or paid and given by any other person or corporation in behalf of such other party or parties, or unless such release shall also have been executed by the person, corporation, association, or institution maintaining such hospital; and every such verdict, report, decision, decree, award, judgment, or final order shall remain in force and effect until all such charges of any hospital or institution shall have been paid in full or to the extent of any such verdict, report, decision, decree, award, judgment or order; provided such hospital, institution, or clinic furnishing said services does not charge more than a reasonable and regular rate for such services, in no event to exceed Fifty Dollars (\$50) per day for room and meals, in addition to all other services furnished by such hospital for not longer than 100 days; and the fact that such hospital's method of classification regarding ability to pay for said services is intended solely to secure such hospital's lien on a medically indigent's cause of action for personal injuries shall not be construed as avoiding the provisions of this lien statute; provided that a notice in writing containing the name and address of the injured person, the date of the accident, the name and location of the hospital or clinic rendering the service, and if known, the name of the person or persons, firm or firms, corporation or corporations, alleged to be liable to pay damages to such injured person for such injuries so received, shall be filed in the office of the County Clerk of the county in which such injury shall have occurred, prior to the payment of any moneys to such injured person or his legal representative or other person entitled thereto as damages for or on account of such injuries. Provided further that this lien shall not attach to any claim for amounts due the injured person under the Workmen's Compensation Act of the State of Texas,<sup>1</sup> or Federal Liability Act,<sup>2</sup> or Federal Longshoremen's or Harbor Workers' Act.<sup>3</sup> Provided further, that the lien provided for in this Act shall not attach to any claim for amounts due the injured person by any person, firm, association, corporation, or receiver, or receivers, or his, its, or their employees, owning and/or operating a railroad in this State, where such person, firm, association, corporation, or receivers, or receiver, or his, its, or their employees, maintain a hospital, furnishing hospitalization to injured persons, where the said injured person is actually receiving treatment, care and maintenance in the hospital so owned by such person, firm, asso-

ciation, corporation, receiver or receivers, or his, its, or their employees.

**County Clerk to Provide Hospital Lien Docket**

Sec. 4. Every County Clerk shall at the expense of the county, provide a suitable well-bound book, to be called the "Hospital Lien Docket," upon which, on the filing of lien claims under the provisions of this Act he shall enter the name of the injured person, the date of the accident, the name and address of the hospital or clinic or other institution making the claim, and the amount thereof.

And the said Clerk shall make a proper index of the same in the name of the injured person, and such Clerk shall be entitled to Fifty (50¢) Cents for filing each claim and such fee shall be accountable as fees of office.

The term "corporation" as used in this Article shall include all municipal corporations, as well as all private, public, and quasi-public corporations, except county and common and independent school districts.

**Hospital Records Subject to Inspection**

Sec. 4a. Any person or persons, firm or firms, corporation or corporations legally liable, or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person, under such reasonable rules and regulations as such hospital may require, and the hospital record with respect to the injured person or persons may be admitted in evidence in any proceeding with respect to the recovery of damages.

**Discharge of Lien Entered on Hospital Lien Docket**

Sec. 4b. To discharge any notices filed under the provisions of this Act the hospital authorities or person in charge of the finances of said hospital to whom said lien has been duly paid shall execute a certificate to the effect that the claim filed by such hospital for treatment, care and maintenance therein has been duly paid or released and authorizing the Clerk of the county in whose office said notice of hospital lien has been filed, to discharge the same; and thereupon such Clerk shall enter upon the margin of the hospital lien docket in which the said hospital lien has been entered, a memorandum of such filing and the date when such certificate of payment or release was filed in his office, which certificate and entry shall constitute a discharge of lien, for which the Clerk shall receive the sum of Fifty (50¢) Cents and such fee shall be accountable as fees of office.

**Insurance Excepted From Claim of Lien**

Sec. 4c. The provisions of this Act shall not give to any such hospital, or any person, firm or corporation claiming under it, any lien, claim, right, or demand upon the proceeds of any insurance policy in favor of the injured

party, his beneficiaries, or legal representatives, and none of the provisions of this Act shall have application thereto. Provided, however, this section shall not include public liability insurance carried by the insured to protect him against loss or damage as a result of any accident or collision covered by said public liability insurance policy.

[Acts 1933, 43rd Leg., p. 182, ch. 85; Acts 1953, 53rd Leg., p. 443, ch. 131, § 1; Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1, eff. June 8, 1971.]

<sup>1</sup> Article 8306 et seq.

<sup>2</sup> 45 U.S.C.A. §§ 51 to 59.

<sup>3</sup> 33 U.S.C.A. §§ 901 to 950.

**Repeals**

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the micro-filming of records by counties, and classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930, see note under article 3930.*

**Art. 5506b. Lien for Repairing, Altering, Dyeing, Cleaning, or Pressing, Wearing Apparel**

**Possession, Retention of**

Sec. 1. Whenever any article of wearing apparel or garment shall be left with any person, firm, or corporation for the purpose of being repaired, altered, dyed, cleaned, or pressed, or laundered, such person, firm, or corporation is authorized to retain possession of said wearing apparel or garment until the amount due on same for repairing, altering, dyeing, cleaning, pressing, or laundering by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said person, firm, or corporation shall retain possession of such wearing apparel or garment until all reasonable, customary, and usual compensation shall be paid in full.

**Sale of Property**

Sec. 2. When possession of any of the articles of wearing apparel or garments embraced in the preceding Article has continued for sixty (60) days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said wearing apparel or garments to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten (10) days after such notice has been given him to pay said charges, the persons so holding said wearing apparel or garments, after twenty (20) days notice, are authorized to sell said wearing apparel and garments at public or private sale and apply the proceeds to the payment of said charges, including a reasonable cost incurred in holding said sale, and shall pay over the balance to the

person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said wearing apparel or garments shall not be required to give such notice before proceeding to sell.

Unclaimed Proceeds

Sec. 3. If the person who is legally entitled to receive the balance mentioned in this Chapter is not known, or has removed from the State or from the county in which such repairing, altering, dyeing, cleaning, pressing, or laundering was done, or such wearing apparel or garments were so held, the person, firm, or corporation so holding said property shall pay the balance to the County Treasurer of the county in which said articles of wearing apparel or garments are held and take his receipt therefor. Whenever such balance shall remain in the possession of the County Treasurer for the period of two (2) years unclaimed by the

party legally entitled to same, such balance shall become a part of the General Fund of the county in which the articles of wearing apparel or garments were sold.

[Acts 1937, 45th Leg., p. 1138, ch. 459.]

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

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

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

# TITLE 91

## LIMITATIONS

### 1. LIMITATIONS OF ACTIONS FOR LANDS

#### Article

- 5507. Three Years' Possession.
- 5508. "Title" and "Color of Title" Defined.
- 5509. Five Years' Possession.
- 5510. Ten Years' Possession.
- 5511. Land Surrounded by Other Lands.
- 5512. Possession by Adjacent Owner.
- 5513. Title by Possession.
- 5514. "Peaceable Possession".
- 5515. "Adverse Possession".
- 5516. Possession by Different Persons.
- 5517. Right of the State, Counties, Cities and School Districts.
- 5518. Person Under Disability.
- 5519. Action Barred in Twenty-Five Years.
- 5519a. Title to Land by Limitation.
- 5520. Actions by Vendors and on Voluntary Mechanic's or Materialman's Lien; Tolling; Presumption of Payment.
- 5521. Repealed.
- 5522. Lien Continued in Force.
- 5523. Repealed.
- 5523a. Ten Year Limitation in Action for Land.

### 2. LIMITATIONS OF PERSONAL ACTIONS

- 5524. Actions to be Commenced in One Year.
- 5525. Survival of Cause of Action.
- 5526. Actions to be Commenced in Two Years.
- 5526a. Two Years Limitations on Claims for Closing or Abandoning Streets or Highways.
- 5526b. Actions to be Commenced in Three Years.
- 5527. What Actions Barred in Four Years.
- 5528. On Bond of Executor, Administrator or Guardian.
- 5529. All Other Actions Barred, When.
- 5530. Actions on Foreign Judgments.
- 5531. Actions for Specific Performance.
- 5532. Judgment Revived, When.
- 5533. On Motion for Returning Execution.
- 5534. On Actions to Contest a Will.
- 5535. Person Under Disability.
- 5536. In Forgery or Fraud.
- 5536a. Actions Against Architects and Engineers for Faulty Design, Planning or Inspection.

### 3. GENERAL PROVISIONS

- 5537. Temporary Absence.
- 5538. Limitation After Death.
- 5539. Acknowledgment Must be in Writing.
- 5539a. Limitations on Dismissal for Want of Jurisdiction and Refiling Action in Proper Court.
- 5539b. Limitations as Affecting Amended and Supplemental Pleading.
- 5539c. Counterclaims and Cross Claims; Period of Limitation; Extension.
- 5540. Repealed.
- 5541. Presumption of Death.
- 5542. Action Against Immigrant.
- 5543. Debts Incurred Prior to Removal.
- 5544. One Disability Not Tacked to Another.
- 5545. Agreement Shortening Period Invalid.
- 5546. Notice of Claims for Damages.

### 1. LIMITATIONS OF ACTIONS FOR LANDS

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

Suits to recover real estate, as against a person in peaceable and adverse possession there-

of under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward.

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

**Art. 5513. Title by Possession**

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

The right of the State, all counties, incorporated cities and all school districts shall not be barred by any of the provisions of this Title,

nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, alley, sidewalk, or grounds which belong to any town, city, or county, or which have been donated or dedicated for public use to any such town, city, or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State.

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

**Art. 5518. Person Under Disability**

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

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

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

3. A person of unsound mind, or

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

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

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

No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real es-

tate regardless of minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact.

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

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

Sec. 1. In all suits involving the title to land not claimed by the State, if it be shown that those holding the apparent record title thereto have not exercised dominion over such land or have not paid taxes thereon, one or more years during the period of twenty-five years next preceding the filing of such suit and during such period the opposing parties and those whose estate they own are shown to have openly exercised dominion over and asserted claim to same and have paid taxes thereon annually before becoming delinquent for as many as twenty-five years during such period, such facts shall constitute prima facie proof that the title thereto had passed to such persons so exercising dominion over, claiming and paying taxes thereon.

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

[Acts 1930, 41st Leg., 5th C.S., p. 162, ch. 30; Acts 1931, 42nd Leg., p. 283, ch. 169.]

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

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

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

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

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

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

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

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

The repealed article was derived from Acts 1905, p. 334; and Acts 1913, p. 250, and related to presumption of payment of purchase money or mortgage lien notes. The subject matter of the repealed article is now incorporated in article 5520.

#### Art. 5522. Lien Continued in Force

When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mort-

gage, or the recorded renewal and extension of the same, shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided the owner of the land and the holder of the note or notes may at any time enter into a valid agreement renewing and extending the debt and lien, so long as it does not prejudice the rights of lien holders or purchasers subsequent to the date such liens became barred of record under laws existing prior to the taking effect of, or under this Act; as to all such lien holders or purchasers any renewal or extension executed or filed for record after the note or notes and lien or liens were, or are, barred of record and before the filing for record of such renewal or extension, such renewal or extension shall be void.

[Acts 1925, S.B. 84.]

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

The repealed article was derived from Acts 1925, 39th Leg., ch. 64, p. 215, § 1, and related to limitation as to deeds of trust, etc. For similar provisions, see, now, arts. 5520, 5522.

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

Any person who has the right of action for the recovery of land because of any one or more of the following defects in any instrument, where it has not been signed by the proper officer of any corporation; or where the corporate seal of the corporation has not been impressed on such instrument; or where the record does not show such corporate seal; or because the record does not show authority therefor by the Board of Directors and Stockholders (or either of them) of a corporation; or where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or where the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or where such instrument is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or where the notarial seal is not shown of record; or where the wording of the consideration may or might create an implied lien in favor of grantor (By this is not meant an express vendor's lien retained); shall institute his suit therefor not later than 10 years next after the date when such instrument has been or hereafter may be actually recorded in the office of the County Clerk of the county in which such real estate is situated and not afterwards; provided that such person, if not already barred by limitation or otherwise, shall in case of instruments of record for nine years or

more, prior to the effective date of this Act, have the right within one year after the effective date of this Act, to bring proceedings to contest the effect of such instrument but not afterward; and providing further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this State in which the validity of the making, execution or acknowledgment of any such instrument has been or may hereafter be drawn in question; and provided further, this Act is cumulative of all other laws on this subject and if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect. This Act shall not apply to forged instruments, and shall be subject to the provisions of Article 5518, Revised Civil Statutes of 1925.

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

**2. LIMITATIONS OF PERSONAL ACTIONS**

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

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

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

[Acts 1925, S.B. 84.]

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

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

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

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

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

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitation shall run against each item from the date of such delivery, unless otherwise specially contracted.

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.

8. Actions of forcible entry and forcible detainer.

[1925, S.B. 84.]

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

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

(1) within two (2) years after the effective date of this Act in cases where the cause of action has accrued or shall accrue before such effective date and not thereafter;

(2) within two (2) years after the passage of the ordinance or order for closing and abandonment, and not thereafter, in cases where the cause of action shall ac-

crue on or after the effective date of this Act.

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

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

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

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

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

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

Sec. 2. For recovery of overcharges, action at law shall be begun against carriers of property for compensation or hire within three years from the time the cause of action accrues, and not after, subject to Section 3 of this Article, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

##### Extension of Period of Limitation

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

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

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

##### Overcharges Defined

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



Commencement of Actions Arising Prior to  
Effective Date of Act

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

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

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

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

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

**Art. 5530. Actions on Foreign Judgments**

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

action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

[Acts 1925, S.B. 84.]

**Art. 5531. Actions for Specific Performance**

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

[Acts 1925, S.B. 84.]

**Art. 5532. Judgment Revived, When**

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

[Acts 1925, S.B. 84.]

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

Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after.

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

**Art. 5535. Person Under Disability**

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

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

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

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

[Acts 1925, S.B. 84.]

**Art. 5536a. Actions Against Architects and Engineers for Faulty Design, Planning or Inspection**

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

[Acts 1969, 61st Leg., p. 1379, ch. 418, § 1, eff. Sept. 1, 1969.]

**3. GENERAL PROVISIONS**

**Art. 5537. Temporary Absence**

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

[Acts 1925, S.B. 84.]

**Art. 5538. Limitation After Death**

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

[Acts 1925, S.B. 84.]

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

When an action may appear to be barred by a law of limitation, no acknowledgment of the

justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby.

[Acts 1925, S.B. 84.]

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

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

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

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

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

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

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

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

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

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

**Art. 5541. Presumption of Death**

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

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

**Art. 5542. Action Against Immigrant**

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

[Acts 1925, S.B. 84.]

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

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

this article shall be construed to affect the provisions of the preceding article.

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

[Acts 1925, S.B. 84.]

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

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

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

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

# TITLE 92

## MENTAL HEALTH

Subtitle	Article	Former Article	Present Article
I. Mental Health Code	5547-1	3193d	5547-61,
II. Mental Health and Retardation Act	5547-201		5547-62,
III. Miscellaneous Provisions	5557		5547-64,

### I. MENTAL HEALTH CODE

Chapter	Article	Former Article	Present Article
I. General Provisions	5547-1	3193g	5547-27,
II. Voluntary Hospitalization	5547-22		5547-28,
III. Involuntary Hospitalization	5547-27		5547-30,
IV. General Hospitalization Provisions	5547-68		5547-66
V. Private Mental Hospitals	5547-88	3193h	5547-22,
VI. Formal Provisions	5547-100		5547-23,

### CHAPTER ONE. GENERAL PROVISIONS

Article	Former Article	Present Article
5547-1. Short Title.		5547-79
5547-2. Purpose.		5547-71
5547-3. Applicability of Standard Rules of Construction and Definitions.		5547-71
5547-4. Definitions.		5547-71
5547-5. Admission Not Affected by Certain Conditions.		5547-71
5547-6. Notice.		5547-84
5547-7. Section Headings.		5547-4(k),
5547-8. Certificate of Medical Examination for Mental Illness.		5547-31,
5547-9. Additional Powers of the Board.		5547-58,
5547-10. Delegation of Powers and Duties.		5547-62,
5547-11. County Court; Probate Court; Open at All Times.		5547-81
5547-12. Papers to be Filed With Clerk.		5547-32,
5547-12a. Inspection of Records in Mentally Ill Dockets of County Clerks.		5547-33,
5547-13 to 5547-15. Repealed.		5547-36(a, e),
5547-16. Return of Committed Patient to State of Residence.		5547-38
5547-17. Reciprocal Agreements.		5547-60
5547-18. Liability.		5547-79,
5547-19. Penalties for Unwarranted Commitment.		5547-80
5547-20. Penalties for Violation of This Code.		5547-14(a, b)
5547-21. Enforcement Officers.		5547-16

### DISPOSITION TABLE

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

Former Article	Present Article
3174a	5547-4(h)
3174b-1	5547-80(c)
3193	5547-68
3193c	5547-67

Former Article	Present Article
5558 .....	5547-61, 5547-64
5559 .....	5547-63
5561 .....	5547-14(a, b)
5561a .....	5547-43, 5547-49(a, b), 5547-80(a), 5547-81 to 5547-84
5561a, § 2 .....	5547-47, 5547-66
5561a, § 3 .....	5547-48
5561b .....	5547-80(a, b), 5547-81 to 5547-83
P.C. 427a .....	5547-20

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

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

**Art. 5547-1. Short Title**

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 1.]

**Art. 5547-2. Purpose**

It is the purpose of this Code to provide humane care and treatment for the mentally ill and to facilitate their hospitalization, enabling them to obtain needed care, treatment and rehabilitation with the least possible trouble, expense and embarrassment to themselves and their families and to eliminate so far as possible the traumatic effect on the patient's mental health of public trial and criminal-like procedures, and at the same time to protect the rights and liberty of every one. In providing care and treatment for the mentally ill, the State acts to protect the community from harm and to serve the public interest by removing the social and economic burden of the mentally ill on society and the burden and disturbing effect of the mentally ill person on the family, and by care and treatment in a mental hospital to restore him to a useful life and place in society. It is also the legislative purpose that Texas contribute its share to the nation-wide effort through care, treatment and research to reduce the prevalence of mental illness.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 2.]

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

Unless specifically supplanted by this Code or unless the context otherwise requires, the

provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, 1925, and of Acts, Fiftieth Legislature, 1947, Chapter 359, (compiled as Texas Civil Statutes, Article 23a (Vernon's 1948)) apply to this Code.  
[Acts 1957, 55th Leg., p. 505, ch. 243, § 3.]

**Art. 5547-4. Definitions**

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

(a) "Department" means the Texas Department of Mental Health and Mental Retardation.

(b) "Person" includes firm, partnership, joint stock company, joint venture, association and corporation.

(c) "Political subdivision" includes a county, city, town, village or hospital district in this State but does not include the Department or any other department, board or agency of the State having statewide authority and responsibility.

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

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

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

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

(h) "State mental hospital" means a mental hospital operated by the Department.

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

(j) "Patient" means any person admitted or committed to any mental hospital or any person under observation, care or treatment in a mental hospital.

(k) "Mentally ill person" means a person whose mental health is substantially impaired. For purposes of this Code the term "mentally ill person" includes a person who is suffering from the mental conditions referred to in Article 1, Section 15a of the Constitution of the State of Texas.

(l) "Mentally incompetent person" means a mentally ill person whose mental illness renders him incapable of caring for himself and managing his property and financial affairs.

(m) "Next of kin" means spouse or nearest known relative who is legally of age.

(n) "Resident of this State" means a person who has lived continuously in this State for a period of one (1) year or more and who has not acquired a residence in another state by living continuously therein for at least one (1) year subsequent to his residence in this State. Time spent in a public institution or on furlough therefrom is not included in determining residence in this or another State.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 4; Acts 1961, 57th Leg., p. 1029, ch. 454; Acts 1967, 60th Leg., p. 566, ch. 254, § 1, eff. Sept. 1, 1967.]

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

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 5.]

#### Art. 5547-6. Notice

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 6.]

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

Section headings are not a part of this Code. The section headings are mere catch-words designed to give some indication of the contents of the sections to which they are attached.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 7.]

#### Art. 5547-8. Certificate of Medical Examination for Mental Illness

A Certificate of Medical Examination for Mental Illness shall be dated and signed by the examining physician, and shall state:

(a) The name and address of the examining physician;

(b) The name and address of the person examined;

(c) The date and place of the examination;

(d) A brief diagnosis of the physical and mental condition of the person examined;

(e) The period of time, if any, that the person examined has been under the care of the examining physician; and

(f) The opinion of the examining physician as to whether the person examined is mentally ill, and if so—

(1) whether he requires observation and treatment in a mental hospital; or

(2) whether he requires hospitalization in a mental hospital; and

(3) whether, because of his mental illness, he is likely to cause injury to himself or to others if not immediately restrained.

(g) An accurate description of the type or kind of treatment, if any, given or administered by or under the direction of the examining physician or the head of the hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 8.]

#### Art. 5547-9. Additional Powers of the Board

In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of applications, certificates, records and reports provided for under this Code and the information required to be contained therein; to require reports from the head of any mental hospital relating to the admission, examination, diagnosis, release or discharge of any patient; to visit each hospital regularly to review the commitment procedures of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of the mentally ill.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 9.]

#### Art. 5547-10. Delegation of Powers and Duties

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

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 10.]

#### Art. 5547-11. County Court; Probate Court; Open at All Times

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 11.]

#### Art. 5547-12. Papers to be Filed With Clerk

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 12.]

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

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

[Acts 1965, 59th Leg., p. 1578, ch. 684, § 1.]

**Arts. 5547-13 to 5547-15. Repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2, eff. Aug. 28, 1967**

Section 1 of Acts 1967, 60th Leg., p. 1785, ch. 680 added article 3930(b); sections 2, 3 of the act of 1967 are set out as notes under article 3930(b).

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

(a) The Board may return a nonresident patient committed to a mental hospital in this State to the proper agency of the state of his residence.

(b) The Board may permit the return of any resident of this State who is committed to a mental hospital in another state.

(c) The head of a State mental hospital may detain a patient returned to this State from the state of his commitment for a period not to exceed ninety-six (96) hours pending order of the court in commitment proceedings in this State.

(d) All expenses incurred in returning committed patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 16.]

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

The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients committed to mental hospitals in this or other states.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 17.]

**Art. 5547-18. Liability**

All persons acting in good faith, reasonably and without negligence in connection with examination, certification, apprehension, custody, transportation, detention, treatment or discharge of any person, or in the performance of any other act required or authorized by this Code, shall be free from all liability, civil or criminal, by reason of such action.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 18.]

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

Any person who wilfully causes or conspires with or assists another to cause the unwarranted commitment or hospitalization of any individual to a mental hospital is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000) or by imprisonment in the county jail not exceeding two (2) years or by both.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 19.]

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

Any person who knowingly violates any provision of this Code is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000) or by imprisonment in the county jail not exceeding one (1) year or by both.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 20.]

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

The Attorney General and the district attorneys and county attorneys, within their respective jurisdictions, shall prosecute violations of this Code.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 21.]

**CHAPTER TWO. VOLUNTARY HOSPITALIZATION**

**Article**

- 5547-22. Voluntary Admission.
- 5547-23. Application for Voluntary Admission.
- 5547-24. Advising of Patient's Rights.
- 5547-25. Right to Release.
- 5547-26. No Commitment of Voluntary Patient.

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

The head of a mental hospital may admit as a voluntary patient any person for whom a proper application is filed, if he determines upon the basis of preliminary examination that the person has symptoms of mental illness and will benefit from hospitalization.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 22.]

**Art. 5547-23. Application for Voluntary Admission**

The application for admission of a person to a mental hospital as a voluntary patient:

(a) Shall be in writing and signed by the voluntary patient if he is legally of age or by his parent, legal guardian, or the county judge, with his consent, if he is not legally of age;

(b) Shall be filed with the head of the mental hospital to which admission is sought; and

(c) Shall state that the patient agrees to submit himself to the custody of the mental hospital for diagnosis, observation, care and treatment for an initial period of no less than ten (10) days unless sooner

discharged, and thereafter to remain in the mental hospital until he is discharged or until the expiration of ninety-six (96) hours after written request for his release is filed with the head of the hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 23.]

#### Art. 5547-24. Advising of Patient's Rights

Upon admission of a voluntary patient to a mental hospital, the head of the hospital shall inform the patient and any relative or friend who accompanies him to the hospital, in simple, non-technical language concerning:

(a) The right of the patient to leave the hospital ninety-six (96) hours after filing with the head of the hospital a written request for his release, signed by the patient or someone on his behalf and with his consent;

(b) The right of habeas corpus, which is not affected by his admission to a mental hospital as a voluntary patient;

(c) The fact that his civil rights and legal capacity are not affected by his admission to a mental hospital as a voluntary patient; and

(d) The "Rights of Patients" set forth in this Code.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 24.]

#### Art. 5547-25. Right to Release

A voluntary patient shall be released within ninety-six (96) hours after written request for his release is filed with the head of the hospital signed by the patient or by someone on his behalf and with his consent, unless prior to the expiration of the ninety-six (96) hour period:

(a) Written withdrawal of the request for release is filed, or

(b) Application for Temporary Hospitalization or Petition for Indefinite Commitment is filed and the patient is detained in accordance with the provisions of this Code.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 25.]

#### Art. 5547-26. No Commitment of Voluntary Patient

No Application for Temporary Hospitalization or Petition for Indefinite Commitment may be filed for the commitment of a voluntary patient to a mental hospital unless a request for his release has been filed with the head of the hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 26.]

### CHAPTER THREE. INVOLUNTARY HOSPITALIZATION

#### PART 1. EMERGENCY ADMISSION PROCEDURE

##### Article

- 5547-27. Authority of Health or Peace Officer.
- 5547-28. Emergency Admission.
- 5547-29. Notification of Admission.
- 5547-30. Examination and Certification.

#### PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT

##### Article

- 5547-31. Application for Temporary Hospitalization.
- 5547-32. Examination by Two Physicians Required.
- 5547-33. Notice Required.
- 5547-34. Dismissal of Application.
- 5547-35. Liberty Pending Hearing.
- 5547-36. Hearing on the Application.
- 5547-37. Findings on Certificates.
- 5547-38. Order Upon Hearing.
- 5547-39. Stay of Order of Temporary Hospitalization.
- 5547-39a. Notice of Appeal.
- 5547-39b. Transcript on Appeal.
- 5547-39c. Stay Order.
- 5547-39d. Trial of Appeals.

#### PART 3. INDEFINITE COMMITMENT

- 5547-40. Prerequisite to Commitment.
- 5547-41. Petition.
- 5547-42. Certificate Required.
- 5547-43. Hearing set; Attorney Appointed.
- 5547-44. Notice of Hearing.
- 5547-45. Waiver of Trial by Jury.
- 5547-46. Form of Waiver.
- 5547-47. Liberty Pending Hearing.
- 5547-48. Trial by Jury.
- 5547-49. Hearing on the Petition.
- 5547-50. Medical Testimony Required.
- 5547-51. Issues; Findings.
- 5547-52. Order Upon Hearing.
- 5547-53. New Trial.
- 5547-54. Notice of Appeal.
- 5547-55. Transcript on Appeal.
- 5547-56. Stay Order.
- 5547-57. Trial of Appeals.

#### PART 4. ORDERS, TRANSPORTATION, PROTECTIVE CUSTODY

- 5547-58. Designation of Hospital.
- 5547-59. Commitment to a Private Mental Hospital.
- 5547-60. Commitment to an Agency of the United States.
- 5547-61. Person Authorized to Transport Patient.
- 5547-62. Writ of Commitment.
- 5547-63. Transcript.
- 5547-64. Transportation of Patients.
- 5547-65. Acceptance of Patient Acknowledged.
- 5547-66. Order of Protective Custody.
- 5547-67. Detention in Protective Custody.

#### PART 1. EMERGENCY ADMISSION PROCEDURE

#### Art. 5547-27. Authority of Health or Peace Officer

Any health or peace officer, who has reason to believe and does believe upon the representation of a credible person, in writing, or upon the basis of the conduct of a person or the circumstances under which he is found that the person is mentally ill and because of his mental illness is likely to cause injury to himself or others if not immediately restrained, may upon obtaining a warrant from any magistrate, take such person into custody, and immediately transport him to the nearest hospital and make application for his admission, pursuant to the warrant of the magistrate. Such person admitted upon such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate



Court of such county, ordering further detention. Provided, however, that should the person be taken into custody on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 27; Acts 1961, 57th Leg., p. 1029, ch. 454, § 2.]

#### Art. 5547-28. Emergency Admission

The head of a mental hospital or a general hospital shall not admit nor detain any person for emergency observation and treatment unless:

(a) A warrant has been obtained from a magistrate ordering the apprehension and taking into custody of such person to be admitted, or an order of protective custody has been issued pursuant to Section 66 of this Code;

(b) A written application is made by a health or peace officer who has such person in his custody stating the circumstances under which the person was taken into custody and the officer's belief and the reasons therefor that the person is mentally ill and that because of his mental illness is likely to cause injury to himself or others if not immediately restrained; and

(c) A written and certified opinion is made by the medical officer on duty at the hospital, that after a preliminary examination, the person has symptoms of mental illness and is likely to cause injury to himself or others if not immediately restrained.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 28; Acts 1961, 57th Leg., p. 1029, ch. 454, § 3.]

#### Art. 5547-29. Notification of Admission

The head of the hospital admitting a person for emergency observation and treatment shall immediately give notice thereof by registered mail to the person's guardian or responsible relative, and shall report the admission to the Board.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 29.]

#### Art. 5547-30. Examination and Certification

The head of the hospital shall have a physician examine every person within twenty-four (24) hours after his admission to a hospital for emergency observation and treatment and prepare a Certificate of Medical Examination for Mental Illness. A copy of the Certificate shall be sent forthwith to the person's guardian or responsible relative.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 30; Acts 1931, 57th Leg., p. 1029, ch. 454, § 4.]

## PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT

### Art. 5547-31. Application for Temporary Hospitalization

A sworn Application for Temporary Hospitalization of a proposed patient may be filed with the county court of the county in which the proposed patient resides or is found. The Application may be made by any adult person, or by the county judge, and shall state upon information and belief that the proposed patient is not charged with a criminal offense, that he is mentally ill, and that for his own welfare and protection or the protection of others he requires observation and/or treatment in a mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 31.]

### Art. 5547-32. Examination by Two Physicians Required

(a) Before a hearing may be had on an Application for Temporary Hospitalization there must be filed with the county court Certificates of Medical Examination for Mental Illness by two (2) physicians who have examined the proposed patient within five (5) days of the filing of the Certificate, each stating that the proposed patient is mentally ill and requires observation and/or treatment in a mental hospital.

(b) If the Certificates of two (2) physicians are not filed with the Application, the county judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the proposed patient and file Certificates with the county court. The judge may order the proposed patient to submit to the examination.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 32.]

### Art. 5547-33. Notice Required

When an Application for Temporary Hospitalization is filed, the county judge shall set a date for a hearing to be held within fourteen (14) days of the filing of the Application. The proposed patient shall be personally served with a copy of the Application and written notice of the time and place of hearing thereon and of the order, if any, to submit to an examination for mental illness. A copy of the Application and notice shall be sent by registered mail to the guardian or a responsible relative of the proposed patient. When such application is filed, the county judge shall simultaneously appoint an attorney ad litem, if there is no attorney representing the proposed patient. Such attorney shall be furnished with all records and papers in said cause together with access to all the hospital and doctors' records in said cause.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 33.]

### Art. 5547-34. Dismissal of Application

Unless at the time set for hearing on the Application there are on file with the county

court two (2) Certificates of Medical Examination for Mental Illness stating that the proposed patient is mentally ill and requires observation and/or treatment in a mental hospital, the county judge shall dismiss the Application and order the immediate release of the proposed patient if he is not at liberty.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 34.]

#### Art. 5547-35. Liberty Pending Hearing

Pending the hearing on the Application, the proposed patient may remain at liberty unless he is already a patient in a mental hospital or is placed under protective custody.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 35.]

#### Art. 5547-36. Hearing on the Application

(a) The Judge may hold the hearing on an Application for Temporary Hospitalization at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the mental condition of the proposed patient in the event he is present.

(b) The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

(c) The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

(d) The hearing shall be conducted in as informal a manner as is consistent with orderly procedure.

(e) The hearing shall be before the Court without a jury, unless a jury is demanded by a person authorized to make such demand or by the proposed patient or by the Court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 36; Acts 1963, 58th Leg., p. 1369, ch. 522, § 2.]

#### Art. 5547-37. Findings on Certificates

If at the hearing no one opposes temporary hospitalization of the proposed patient, the court may make its findings upon the basis of the Certificates of Medical Examination for Mental Illness on file with the court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 37.]

#### Art. 5547-38. Order Upon Hearing

(a) If upon the hearing the court finds that the proposed patient is not mentally ill or does not require observation and/or treatment in a mental hospital, the court shall enter its order denying the Application and shall order the immediate release of the proposed patient if he is not at liberty.

(b) If upon the hearing the court finds that the proposed patient is mentally ill and requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the mentally ill person be committed as a patient for observation and/or treatment in a mental hospital for a period not exceeding ninety (90) days.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 38.]

#### Art. 5547-39. Stay of Order of Temporary Hospitalization

For good cause shown, the county judge may set aside an Order of Temporary Hospitalization and grant a motion for rehearing.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 39.]

#### Art. 5547-39a. Notice of Appeal

The person ordered committed may appeal the Order of Temporary Hospitalization by filing written notice thereof with the County Court within five (5) days after the Order of Temporary Hospitalization is entered.

[Acts 1963, 58th Leg., p. 1369, ch. 522, § 1.]

#### Art. 5547-39b. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the District Court of the county.

[Acts 1963, 58th Leg., p. 1369, ch. 522, § 1.]

#### Art. 5547-39c. Stay Order

Pending the appeal, the County Judge shall stay the Order of Temporary Hospitalization, and release the proposed patient from custody, upon the posting of an appearance bond in an amount to be determined by the Court.

[Acts 1963, 58th Leg., p. 1369, ch. 522, § 1.]

#### Art. 5547-39d. Trial of Appeals

The appeal from the County Court shall be by trial de novo in the District Court in the same manner as cases appealed from the Justice Court to the County Court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury, otherwise the trial shall be before the Court without a jury. Such cases shall be advanced on the docket and shall be given a preference setting over all other cases.

[Acts 1963, 58th Leg., p. 1369, ch. 522, § 1.]

### PART 3. INDEFINITE COMMITMENT

#### Art. 5547-40. Prerequisite to Commitment

No Petition for the indefinite commitment of a person to a mental hospital may be filed unless he has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 40.]

#### Art. 5547-41. Petition

A sworn Petition for the indefinite commitment of a person to a mental hospital may be filed with the county court of the county in which the proposed patient is hospitalized, or if he is not hospitalized, the county in which he resides or is found. The Petition may be filed by any adult person, or by the county judge, and shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF ———, AS A MENTALLY

ILL PERSON." The Petition shall contain the following statements upon information and belief:

- (1) Name and address of the proposed patient.
(2) Name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian.
(3) Name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient.
(4) Name and address of the mental hospital, if any, in which the proposed patient is a patient.
(5) That the proposed patient is not charged with a crime.
(6) That the proposed patient has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition.
(7) That the proposed patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 41.]

Art. 5547-42. Certificate Required

The Petition shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician who has examined the proposed patient within the fifteen (15) days immediately preceding the filing of the Petition, stating the opinion of the examining physician that the proposed patient is mentally ill and requires hospitalization in a mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 42.]

Art. 5547-43. Hearing Set; Attorney Appointed

When a Petition and the required Certificate of Medical Examination for Mental Illness are filed, the county judge shall set a date for a hearing to be held within thirty (30) days of the filing of the Petition, and shall appoint an attorney ad litem to represent the proposed patient.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 43.]

Art. 5547-44. Notice of Hearing

At least seven (7) days prior to the date of the hearing a copy of the Petition and Notice of Hearing shall be personally served on the proposed patient. A copy of the Petition and Notice of Hearing shall be sent by registered mail to the guardian or a responsible relative of the proposed patient. The Notice of Hearing shall read substantially as follows:

THE STATE OF TEXAS NO. \_\_\_\_\_ IN THE
FOR THE BEST INTER- COUNTY COURT
EST AND PROTECTION OF \_\_\_\_\_ COUN-
OF \_\_\_\_\_ TY, TEXAS
As a Mentally Ill Person

NOTICE OF HEARING

TO: \_\_\_\_\_:
(Proposed Patient)

You are hereby notified that on the
\_\_\_\_\_, at \_\_\_\_\_, in \_\_\_\_\_
(date and time) (place)

County, Texas, a hearing will be held on the attached Petition to determine whether or not you shall be indefinitely committed to a mental hospital and to determine the issue of your mental competency.

You are advised that you have a right to demand a trial by jury or to have a hearing before the judge alone if you wish to waive trial by jury.

Mr. \_\_\_\_\_, attorney at law, whose address is \_\_\_\_\_ and whose telephone number is \_\_\_\_\_, has been appointed by the county judge to represent you in this case for your best interest and protection. However, if you desire you may employ a lawyer of your own choosing to represent you. You may consult with your attorney concerning this Petition and your rights in this case.

Unless a waiver of trial by jury, signed by you or your next of kin, and your attorney, is filed with the court, a jury will hear and determine the issues in this case.

You have the right to be present at this hearing, but you are not required to be present.

\_\_\_\_\_  
County Judge

[Acts 1957, 55th Leg., p. 505, ch. 243, § 44.]

Art. 5547-45. Waiver of Trial by Jury

Waiver of trial by jury shall be in writing under oath and may be signed and filed at any time subsequent to service of the Petition and Notice of Hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient, or his next of kin, and by the attorney ad litem appointed to represent the proposed patient.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 45.]

Art. 5547-46. Form of Waiver

The waiver of trial by jury shall be substantially as follows:

THE STATE OF TEXAS NO. \_\_\_\_\_ IN THE
FOR THE BEST INTER- COUNTY COURT
EST AND PROTECTION OF \_\_\_\_\_ COUN-
OF \_\_\_\_\_ TY, TEXAS
As a Mentally Ill Person

WAIVER OF TRIAL BY JURY

THE STATE OF TEXAS }
COUNTY OF \_\_\_\_\_ }

I, the proposed patient in the above entitled and numbered cause, hereby waive trial by jury and request that the county judge determine on the basis of competent medical or psychiatric testimony whether I shall be indefinitely committed to a mental hospital.

\_\_\_\_\_  
(Proposed Patient)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
County, Texas.

THE STATE OF TEXAS }  
COUNTY OF \_\_\_\_\_ }

I, the \_\_\_\_\_ of the proposed patient  
(relationship)

in the above entitled and numbered cause, in his interest and for his protection and on his behalf, hereby waive trial by jury and request that the county judge determine on the basis of competent medical or psychiatric testimony whether the proposed patient shall be committed indefinitely to a mental hospital.

\_\_\_\_\_  
Next of Kin

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
County, Texas.

THE STATE OF TEXAS }  
COUNTY OF \_\_\_\_\_ }

I, the attorney ad litem for the proposed patient in the above entitled and numbered cause, in his interest and for his protection and on his behalf, hereby waive trial by jury and request that the county judge determine on the basis of competent medical or psychiatric testimony whether the proposed patient shall be committed indefinitely to a mental hospital.

\_\_\_\_\_  
Attorney Ad Litem

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
County, Texas.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 46.]

#### Art. 5547-47. Liberty Pending Hearing

Pending the hearing on the Petition the proposed patient may remain at liberty unless he is already a patient in a mental hospital or is placed under protective custody.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 47.]

#### Art. 5547-48. Trial by Jury

The proposed patient shall not be denied the right to trial by jury. A jury shall determine the issues in the case if no waiver of jury trial is filed, or if jury trial is demanded by the proposed patient or his attorney at any time prior to the termination of the hearing, whether or not a waiver has been filed. The jury shall be summoned and impaneled in the same manner as in other civil cases in the county court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 48.]

#### Art. 5547-49. Hearing on the Petition

(a) The County Judge may hold the hearing on the Petition at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect

on the mental condition of the proposed patient in the event he is present.

(b) The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

(c) The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

(d) At least two (2) physicians who have examined the proposed patient within the fifteen (15) days immediately preceding the hearing shall testify at the hearing.

(e) If a waiver of trial by jury is filed and no jury is demanded, the hearing shall be before the Court without a jury; otherwise the hearing shall be before a jury.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 49; Acts 1963, 58th Leg., p. 1369, ch. 522, § 3.]

#### Art. 5547-50. Medical Testimony Required

No person shall be indefinitely committed to a mental hospital except upon the basis of competent medical or psychiatric testimony.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 50.]

#### Art. 5547-51. Issues; Findings

(a) The court or the jury, as the case may be, shall determine

(1) whether the proposed patient is mentally ill, and if so

(2) whether he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, and if so

(3) whether he is mentally incompetent.

(b) The court shall enter on its docket the findings of the court or jury on these issues.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 51.]

#### Art. 5547-52. Order Upon Hearing

(a) If the court or the jury, as the case may be, finds that the proposed patient is not mentally ill or that he does not require hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall enter an order denying the Petition and discharging the proposed patient.

(b) If the court or the jury, as the case may be, finds that the proposed patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the mentally ill person be committed as a patient to a mental hospital for an indefinite period.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 52.]

#### Art. 5547-53. New Trial

For good cause shown, the county judge within two (2) days after entering his Order of Indefinite Commitment, may set aside his order and grant a new trial to the person ordered committed. A motion for new trial is

not prerequisite to appeal from the order of the county court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 53.]

#### Art. 5547-54. Notice of Appeal

The person ordered committed may appeal the Order of Indefinite Commitment by filing written notice thereof with the county court within thirty (30) days after the Order of Indefinite Commitment is entered.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 54.]

#### Art. 5547-55. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the district court of the county.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 55.]

#### Art. 5547-56. Stay Order

For good cause shown, the county judge may stay the Order of Indefinite Commitment pending the appeal.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 56.]

#### Art. 5547-57. Trial of Appeals

The appeal from the county court shall be by trial de novo in the district court in the same manner as cases appealed from the justice court to the county court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury, otherwise the trial shall be before the court without a jury. Such cases shall be advanced on the docket and shall be given a preference setting over all other cases.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 57.]

### PART 4. ORDERS, TRANSPORTATION, PROTECTIVE CUSTODY

#### Art. 5547-58. Designation of Hospital

In the Order of Temporary Hospitalization or Indefinite Commitment, the court shall commit the patient to a designated

- (a) State mental hospital;
- (b) private mental hospital; or
- (c) agency of the United States operating a mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 58.]

#### Art. 5547-59. Commitment to a Private Mental Hospital

The court may order a patient committed to a private mental hospital at no expense to the State upon:

- (a) Application signed by the patient or by his guardian or friend requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant, and
- (b) Agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this Code.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 59.]

#### Art. 5547-60. Commitment to an Agency of the United States

(a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the State shall be subject to the rules and regulations of the agency.

(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a State mental hospital.

(d) The appropriate courts of this State retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued hospitalization.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 60.]

#### Art. 5547-61. Person Authorized to Transport Patient

(a) The court may authorize a relative or other responsible person having a proper interest in the welfare of the patient to transport him to the designated mental hospital.

(b) If the head of the designated hospital advises the court that hospital personnel are available for the purpose, the court may authorize the head of the hospital to transport the patient to the designated mental hospital.

(c) Otherwise, the court may authorize the sheriff to transport the patient to the designated mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 61.]

#### Art. 5547-62. Writ of Commitment

The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 62.]

#### Art. 5547-63. Transcript

The clerk of the county court shall prepare one certified transcript of the proceedings in the Temporary Hospitalization or Indefinite Commitment Hearing. Such transcript shall accompany the patient to the designated mental hospital and shall be delivered to the hospital personnel in charge of admissions by the person authorized by the court to transport the patient. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 63; Acts 1965, 59th Leg., p. 431, ch. 218, § 1.]

**Art. 5547-64. Transportation of Patients**

(a) Friends and relatives of the patient at their own expense may accompany him to the mental hospital.

(b) Every female patient shall be accompanied by a female attendant unless accompanied by her father, husband or adult brother or son during conveyance to the mental hospital.

(c) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 64.]

**Art. 5547-65. Acceptance of Patient Acknowledged**

The head of the mental hospital, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 65.]

**Art. 5547-66. Order of Protective Custody**

If in the county court in which an Application for Temporary Hospitalization or a Petition for Indefinite Commitment is pending, a Certificate of Medical Examination for Mental Illness is filed showing that the proposed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is mentally ill and because of his mental illness is likely to cause injury to himself or others if not immediately restrained, the judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 66.]

**Art. 5547-67. Detention in Protective Custody**

(a) Persons detained in protective custody shall be detained in a mental hospital or other facility deemed suitable by the county health officer.

(b) No person may be detained in protective custody in a non-medical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than seven days.

(c) The county health officer shall see that a person held in protective custody receives proper care and medical attention pending removal to a mental hospital.

(d) Patients placed in a mental hospital in protective custody pending a hearing upon an Application for Temporary Hospitalization or a Petition for Indefinite Commitment may be discharged by the head of the mental hospital if a

final order has not been entered by the court after the expiration of fourteen days in the case of an Application for Temporary Hospitalization or after the expiration of thirty days in the case of a Petition for Indefinite Commitment.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 67; Acts 1967, 60th Leg., p. 303, ch. 146, § 1, eff. Aug. 28, 1967.]

**CHAPTER FOUR. GENERAL HOSPITALIZATION PROVISIONS****Article**

- 5547-68. Admission and Detention.
- 5547-69. Persons Charged with Criminal Offense.
- 5547-70. Care and Treatment of Patients.
- 5547-71. Physical Restraints.
- 5547-72. Patients Absent Without Authority.
- 5547-73. Transfer to State Mental Hospital.
- 5547-74. Transfer to Private Mental Hospital.
- 5547-75. Transfer to an Agency of the United States.
- 5547-75A. Transfer to Schools for Mentally Retarded.
- 5547-76. Transfer of Records.
- 5547-77. Periodic Examination Required.
- 5547-78. Examination Prior to Release.
- 5547-79. Furlough of Patient.
- 5547-80. Discharge of Patients.
- 5547-81. Effect of Discharge.
- 5547-82. Re-examination—Hearing—Discharge.
- 5547-83. Legal Competency.
- 5547-84. No Effect on Guardianship.
- 5547-85. Writ of Habeas Corpus.
- 5547-86. Rights of Patients.
- 5547-87. Disclosure of Information.

**Art. 5547-68. Admission and Detention**

(a) The head of a mental hospital is authorized to admit and detain any patient in accordance with the following procedures provided in this Code:

- (1) Voluntary Hospitalization
- (2) Emergency Admission
- (3) Temporary Hospitalization
- (4) Indefinite Commitment

(b) Nothing in this Code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

(c) This Code does not affect the admission to a State mental hospital of an alcoholic admitted in accordance with Acts 1951, Fifty-second Legislature, Chapter 398 (compiled as Texas Civil Statutes, Article 3196c (Vernon's 1952 Supplement)) nor the admission of a person charged with a criminal offense admitted in accordance with Acts, Forty-fifth Legislature, Regular Session, 1937, Chapter 466 (compiled as Article 932a, Code of Criminal Procedure (Vernon's 1948)).

[Acts 1957, 55th Leg., p. 500, ch. 243, § 68.]

**Art. 5547-69. Persons Charged With Criminal Offense**

The sections of this Code concerning the discharge, furlough and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Acts, Forty-fifth Legislature, Regular Session, 1937, Chapter 466 (compiled as Article

932a, Code of Criminal Procedure (Vernon's 1948)).

[Acts 1957, 55th Leg., p. 505, ch. 243, § 69.]

#### Art. 5547-70. Care and Treatment of Patients

The head of a mental hospital shall provide adequate medical and psychiatric care and treatment for every patient in accordance with the highest standards accepted in medical practice. The head of a mental hospital may give the patient accepted psychiatric treatment and therapy.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 70.]

#### Art. 5547-71. Physical Restraints

No physical restraint shall be applied to the person of a patient unless prescribed by a physician, and if applied the restraint shall be removed as soon as possible. Every use of physical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the physician who prescribed the restraint.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 71.]

#### Art. 5547-72. Patients Absent Without Authority

(a) The head of a mental hospital shall initiate action to regain custody of any patient who is absent without authority.

(b) It is the duty of any health or peace officer to take into protective custody and detain any such patient and to report the same to the head of the mental hospital or to the county judge and upon the order of either to transport the patient back to the mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 72.]

#### Art. 5547-73. Transfer to State Mental Hospital

(a) The Board may transfer a patient from one State mental hospital to another whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

(b) The head of a private mental hospital, upon notice to the committing court and to the Board, may for any reason transfer an involuntary patient to a State mental hospital designated by the Board.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 73.]

#### Art. 5547-74. Transfer to Private Mental Hospital

The Board may transfer an involuntary patient to a private mental hospital, or the head of a private mental hospital may transfer an involuntary patient to another private mental hospital, at no expense to the State, upon:

(a) Application signed by the patient or by his guardian or friend requesting such transfer to a private mental hospital at the expense of the patient or applicant; and

(b) Agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for

him in accordance with the provisions of this Code; and

(c) Notice in writing of the transfer to the committing court.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 74.]

#### Art. 5547-75. Transfer to an Agency of the United States

The Board or the head of a private mental hospital may transfer an involuntary patient to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the patient is eligible for care or treatment therein; provided however that the transfer of any involuntary patient to an agency of the United States shall be made only after an order approving the same has been entered by the county judge of the county of residence of the patient.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 75.]

#### Art. 5547-75A. Transfer to Schools for Mentally Retarded

The head of a mental hospital under the control and management of the Texas Department of Mental Health and Mental Retardation may transfer persons under involuntary commitment to the mental hospital of which he is head to a State school for the mentally retarded under control and management of the Department when an examination of such person indicates symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment and supervision in a State school for the mentally retarded would be in the best interest of such person. A certificate evidencing the diagnosis of mental retardation and containing the recommendation of the head of the mental hospital that such person be transferred to a designated State school for the mentally retarded shall be furnished the committing court. No transfer shall be made until the judge of the committing court has entered an order approving the transfer.

[Acts 1969, 61st Leg., p. 1032, ch. 335, § 1, eff. Sept. 1, 1969.]

#### Art. 5547-76. Transfer of Records

The head of the mental hospital from which a patient is transferred shall send the patient's appropriate hospital records or copy thereof to the head of the mental hospital to which the patient is transferred.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 76.]

#### Art. 5547-77. Periodic Examination Required

The head of a mental hospital shall cause every patient to be examined as frequently as practicable, but not less often than each six (6) months.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 77.]

#### Art. 5547-78. Examination Prior to Release

Prior to the date upon which the head of the hospital is required to release a patient, a staff physician shall examine the patient and pre-

pare a Certificate of Medical Examination for Mental Illness, a copy of which shall be sent to the committing court, if any.

(a) If the head of the hospital determines that the patient requires further hospitalization as a mentally ill person, and because of his mental illness is likely to cause injury to himself or others if not immediately restrained, the head of the hospital shall, prior to the date on which he is required to release the patient, cause to be filed in the county court of the proper county a Certificate of Medical Examination for Mental Illness and an Application for Temporary Hospitalization or Petition for Indefinite Commitment, and thereupon may detain the patient pending order of the court.

(b) If the head of the hospital determines that the patient requires further hospitalization as a mentally ill person he shall so inform a responsible relative of the patient, and may cause an Application for Temporary Hospitalization or Petition for Indefinite Commitment to be filed in the county court of the proper county.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 78.]

#### Art. 5547-79. Furlough of Patient

The head of a mental hospital may, after examination, furlough an improved patient and may at any time, by order, re-hospitalize a furloughed patient, provided, that the patient's mental condition warrants re-hospitalization. A patient on furlough remains subject to the orders of the head of the hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 79.]

#### Art. 5547-80. Discharge of Patients

(a) The head of a mental hospital may at any time discharge a patient if he determines after examination that the patient no longer requires hospitalization.

(b) The head of a mental hospital may at any time discharge a patient on furlough, and shall discharge a patient who has been on furlough status for a continuous period of eighteen (18) months.

(c) The head of a mental hospital may discharge a non-resident patient who has been absent without authority for a continuous period of thirty (30) days.

(d) Upon the discharge of a patient, the head of the mental hospital shall prepare a Certificate of Discharge stating the basis therefor. The Certificate of Discharge shall be filed with the committing court, if any, and a copy thereof delivered or mailed to the patient.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 80.]

#### Art. 5547-81. Effect of Discharge

(a) The discharge of a patient terminates the period of commitment; and a discharged patient shall not be again hospitalized other than in accordance with the provisions of this Code.

(b) The discharge of a patient who has been found to be mentally incompetent terminates the presumption that he is mentally incompetent.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 81.]

#### Art. 5547-82. Re-examination—Hearing—Discharge

(a) Any patient, or his next friend on his behalf and with his consent, may petition the county judge of the county in which the patient is hospitalized for re-examination and hearing to determine whether the patient requires continued hospitalization as a mentally ill person.

(b) Upon the filing of the Petition the county judge shall immediately notify the head of the mental hospital in which the patient is hospitalized.

(c) Upon receipt of notice, the head of the hospital shall cause the patient to be examined. If he determines that the patient no longer requires hospitalization as a mentally ill person, the head of the hospital shall immediately discharge the patient. If he determines that the patient requires hospitalization as a mentally ill person, he shall file a Certificate of Medical Examination for Mental Illness with the county court within ten (10) days after the filing of the Petition for Re-examination and Hearing.

(d) At the expiration of the ten-day period, if the head of the hospital has filed a Certificate of Medical Examination for Mental Illness stating that the patient requires hospitalization as a mentally ill person, or if the head of the hospital has failed to file a Certificate of Medical Examination for Mental Illness and has not discharged the patient, the county judge shall set a date and place for hearing on the petition and give notice thereof to the patient and the head of the hospital, and shall appoint a physician not on the staff of a mental hospital to examine the patient and file a Certificate of Medical Examination for Mental Illness with the court. The court shall enter the necessary orders to insure that the patient may, if he desires, be examined by a physician of his own choosing at his own expense.

(e) The hearing shall be before the court without a jury.

(f) If the court finds that the patient does not require continued hospitalization as a mentally ill person, the court shall order the head of the hospital to discharge the patient. Otherwise, he shall dismiss the Petition.

(g) When the Petition for Re-examination and Hearing is filed before the expiration of one (1) year after the Order of Indefinite Commitment or before the expiration of two (2) years after the filing of a similar Petition, the county judge is not required to order such re-examination and hearing.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 82.]

#### Art. 5547-83. Legal Competency

(a) The judicial determination under this Code that a person is mentally incompetent



creates a presumption that the person continues to be mentally incompetent until he is discharged from the mental hospital or until his mental competency is re-determined by a court.

(b) The judicial determination that a person is mentally ill or the admission or commitment of a person to a mental hospital, without a finding that he is mentally incompetent, does not constitute a determination or adjudication of the mental competency of the person and does not abridge his rights as a citizen or affect his property rights or legal capacity.

(c) When any person under the provisions of this Code shall have been committed as a patient to a mental hospital for any period, regardless of duration, by order of a county court, and shall have been discharged and released by such hospital, such person may file application with such county court for an order adjudicating that he is not now mentally ill or incompetent, to which application shall be attached a certification attesting to such facts, signed by an attending physician at the hospital to which such patient was committed. The court may enter an order granting such application; but, in connection therewith, he may conduct a hearing and summon such witnesses as in his judgment may be necessary to satisfy him as to the merits of the application.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 83; Acts 1959, 56th Leg., p. 887, ch. 409, § 1.]

#### Art. 5547-84. No Effect on Guardianship

No action taken or determination made under this Code and no provision of this Code shall affect any guardianship established in accordance with law.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 84.]

#### Art. 5547-85. Writ of Habeas Corpus

Nothing herein shall be construed to abridge the right of any person to a Writ of Habeas Corpus.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 85.]

#### Art. 5547-86. Rights of Patients

(a) Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the welfare of the patient to impose restrictions, every patient in a mental hospital has the following rights:

- (1) to receive visitors;
- (2) to religious freedom in accordance with the principles, tenets, or teachings of any well-established church, if requested by the patient or if requested by his next of kin or guardian;
- (3) to communicate with persons outside the hospital; and
- (4) to communicate by uncensored and sealed mail with legal counsel, the Board, the courts and the Attorney General of the State.

(b) Any restriction imposed by the head of the hospital on the exercise of these rights for

the welfare of a particular patient and the reasons for the restriction shall be made a part of the clinical record of the patient.

(c) The head of a mental hospital or the superintendent, supervisor, or manager of a mental hospital in which a patient is confined is the agent for service of process on the patient. The person receiving process directed to a patient shall certify that he is aware of the provisions of this Act and shall sign the certificate with his name and title. The certificate shall be attached to the citation and be returned by the serving officer. The person receiving process directed to a patient shall within three days either forward it by registered mail to the patient's legal guardian or deliver it to the patient personally, whichever appears to be in the best interest of the patient.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 86; Acts 1965, 59th Leg., p. 424, ch. 210, § 1.]

#### Art. 5547-87. Disclosure of Information

(a) Hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where

(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor;

(2) disclosure may be necessary to carry out the provisions of this Code;

(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest, or

(4) the Board or the head of the hospital determines that disclosure will be in the best interest of the patient.

(b) Nothing in this section shall preclude disclosure of information as to the patient's current condition to members of his family or to his relatives or friends.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 87.]

### CHAPTER FIVE. PRIVATE MENTAL HOSPITALS

#### Article

- 5547-88. License Required.
- 5547-89. Physician in Charge.
- 5547-90. Application for License.
- 5547-91. License Issuance.
- 5547-92. Application and License Fees.
- 5547-93. Denial, Suspension or Revocation of License.
- 5547-94. Judicial Review.
- 5547-95. Rules, Regulations and Standards.
- 5547-96. Records and Reports.
- 5547-97. Powers of Investigation.
- 5547-98. Administration of Oaths—Examination of Witnesses—Subpoenas.
- 5547-99. Injunction.

#### Art. 5547-88. License Required

Ninety (90) days after the effective date of this Code, no person or political subdivision

may operate a mental hospital unless licensed to do so by the Department.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 88.]

#### Art. 5547-89. Physician in Charge

Every licensed private mental hospital shall be in the charge of a physician who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology or who has had at least three (3) years experience as a physician in psychiatry in a mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 89.]

#### Art. 5547-90. Application for License

(a) Application for license to operate a private mental hospital shall be made on forms prescribed by the Department. The Department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:

- (1) The name and location of the mental hospital;
- (2) The name and address of the physician to be in charge of hospital care and treatment of mental patients;
- (3) The name and addresses of the owners of the hospital, including the officers, directors and principal stockholders if the owner is a corporation or other association;
- (4) The bed capacity to be authorized by the license;
- (5) The number, duties and qualifications of the professional staff;
- (6) A description of the equipment and facilities of the hospital;
- (7) Such other information as the Department may require, which may include affirmative evidence of ability to comply with such standards, rules and regulations as the Department may prescribe.

(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital, describing the buildings and grounds and the uses intended to be made of the various portions of the premises.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 90.]

#### Art. 5547-91. License Issuance

(a) After receipt of proper application for license and the required fees, the Department shall make such investigation as it deems desirable. If the Department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the Department, the Department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license.

(b) The authorized bed capacity may be increased at any time upon the approval of the Department and may be reduced at any time by notifying the Department.

(c) A license issued by the Department is not transferable or assignable.

(d) A license remains in effect until suspended or revoked by the Department, or surrendered by the licensee.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 91.]

#### Art. 5547-92. Application and License Fees

(a) An application fee and a license fee shall accompany the application for a license. If the Department denies the license, only the license fee shall be returned. The application fee is Twenty-five Dollars (\$25). The annual license fee payable on August 31, of each year is Fifty Dollars (\$50).

(b) All application fees and license fees received by the State Health Department under this Chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the Legislature, for the uses and purposes prescribed by this Act, including salaries, maintenance, travel expense, repairs, printing and postage.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 92; Acts 1961, 57th Leg., p. 872, ch. 383, § 1.]

#### Art. 5547-93. Denial, Suspension or Revocation of License

(a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the Department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the Department or the provisions of this Code.

(b) If, after investigation, the Department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital, the Department may temporarily suspend a license for ten (10) days pending a hearing on the suspension order, and may issue orders necessary for the welfare of the patients.

(c) The Department shall prescribe the procedure for hearings under this chapter.

(d) The legal staff of the Department may participate in the hearings.

(e) The proceedings of the hearing shall be recorded in such form that the record can be transcribed if notice of appeal is filed.

(f) The Department shall send a copy of the decision by registered mail to the applicant or licensee notifying him of the action taken by the Department. A decision denying, suspending or revoking a license shall contain findings and conclusions upon which the decision is based.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 93.]

#### Art. 5547-94. Judicial Review

(a) Any applicant or licensee may appeal from the decision of the Department by filing notice of appeal in the District Court of Travis County and with the Department within thirty

(30) days after receiving a copy of the decision of the Department.

(b) Upon receiving notice of appeal, the Department shall certify and file with the court a transcript of the proceedings in the case. By stipulation the transcript may be limited.

(c) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. The substantial evidence rule shall not apply.

(d) The court may affirm or set aside the decision of the Department or may remand the case for further proceedings before the Department.

(e) If the court affirms the decision of the Department, the applicant or licensee shall pay the cost of the appeal; otherwise the Department shall pay the cost of the appeal.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 94.]

#### Art. 5547-95. Rules, Regulations and Standards

(a) The Department may prescribe such rules, regulations and standards, not inconsistent with the Constitution and the laws of this State, as it considers necessary and appropriate to insure proper care and treatment of patients in private mental hospitals.

(b) Before any rule, regulation or standard is adopted the Department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations and standards adopted by the Department under this Chapter shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(d) A copy of these rules shall be sent to each licensed private mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 95.]

#### Art. 5547-96. Records and Reports

The Department may require every licensee to make annual, periodical and special reports, and to keep such records as it considers necessary to insure compliance with the provisions of this Code and the rules, regulations and standards of the Department.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 96.]

#### Art. 5547-97. Powers of Investigation

(a) The Department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this Code and such rules, regulations and standards as the Department prescribes.

(b) Any duly authorized agent of the Department may at any reasonable time enter upon the premises of any private mental hospital to inspect the facilities and conditions, to observe the program for care and treatment, to question employees of the hospital, and may have access for the purpose of examination and

transcription to such records and documents as are relevant to the investigation.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 97.]

#### Art. 5547-98. Administration of Oaths—Examination of Witnesses—Subpoenas

(a) For the purpose of any investigation or other proceedings under this Chapter, the Department, or its duly authorized agent, is empowered to administer oaths and affirmations, examine witnesses, receive evidence and to issue subpoenas to require the attendance and testimony of witnesses and the production of all documents or records relating to any matter under inquiry. The attendance of witnesses and the production of any such records may be required from any place within the State of Texas.

(b) In case of refusal to obey a subpoena, the Department may apply to the District Court of Travis County for an order requiring obedience to the subpoena.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 98.]

#### Art. 5547-99. Injunction

(a) For cause shown, the District Court of Travis County shall have jurisdiction to restrain violation of this Chapter.

(b) The Department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 99.]

### CHAPTER SIX. FORMAL PROVISIONS

#### Article

5547-100. Applicability of This Code.

5547-101. Saving Clause.

5547-102. Severability.

5547-103. Repealer.

5547-104. Emergency Clause.

#### Art. 5547-100. Applicability of This Code

This Code applies to any conduct, transaction or proceeding within its terms which occurs after the effective date of this Code, whether the patient concerned in the conduct, transaction or proceeding was admitted or committed before or after the effective date of this Code. In particular, the discharge under this Code of any patient committed to a mental hospital under the prior law terminates any presumption that he is mentally incompetent. However, a proceeding for the commitment of a person to a State mental hospital begun before the effective date of this Code is governed by the law existing at the time the proceeding was begun and for this purpose the law shall be treated as still remaining in force. Unless these proceedings are completed within nine (9) months after the effective date of this Code they shall be governed by the provisions of this Code.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 100.]

**Art. 5547-101. Saving Clause**

The repeal of any law by this Code shall not affect or impair any act done or right, obligation or penalty existing or accrued under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, obligation or penalty.

[Acts 1957, 55th Leg., p. 505, ch. 243, § 101.]

**Art. 5547-102. Severability**

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

[Acts 1957, 55th Leg., p. 505, ch. 243, § 102.]

**Art. 5547-103. Repealer**

The following Statutes and Acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Revised Civil Statutes of Texas, 1925, Articles 5551, 5552, 5553, 5558, 5560, 3193, 3193a, 3193b, 3193c, 3193d, 3193e, 3193f, 3193g, 3193j, 3193k, 3193l, 3193m, 3193n, 3194, 3195, 3196.

Revised Civil Statutes of Texas, 1925, Article 5550, as amended, Acts, 1937, Forty-fifth Legislature, Chapter 445, Section 1; Article 5557, as amended, Acts, 1925, Thirty-ninth Legislature, Chapter 76, Section 2; Article 5559, as amended, Acts, 1925, Thirty-ninth Legislature, Chapter 76, Section 3, Acts, 1937, Forty-fifth Legislature, Second Called Session, Chapter 57, Section 1; Article 5561, as amended, Acts, 1929, Forty-first Legislature, First Called Session, Chapter 101, Acts, 1933, Forty-third Legislature, Chapter 200; Article 3193h, as amended, Acts, 1943, Forty-eighth Legislature, Chapter 152, Section 1; Article 3193i, as amended, Forty-eighth Legislature, Chapter 266, Section 1; Article 3193o, as amended, Acts, 1925, Thirty-ninth Legislature, Chapter 174, Section 25.

Acts, 1925, Thirty-ninth Legislature, Chapter 76, Section 1 (compiled as Texas Civil Statutes, Article 5554 (Vernon's 1948)); Sections 1 through 5 of Acts, 1937, Forty-fifth Legislature, Chapter 446 (compiled as Texas Civil Statutes 5561a (Vernon's 1948)); Acts, 1949, Fifty-first Legislature, Chapter 435, as amended by Acts, 1951, Fifty-second Legislature, Chapter 480, Section 1 (compiled as Texas Civil Statutes 5561b (Vernon's 1952 Supplement)); Acts, 1955, Fifty-fourth Legislature, Chapter 183, Section 1 (compiled as Texas Civil Statutes 5561b-1 (Vernon's 1956 Supplement)); Acts, 1937, Forty-fifth Legislature, Chapter 268 (compiled as Texas Civil Statutes, Article 3193o-1 (Vernon's 1948)); Acts, 1943, Forty-eighth Legislature, Chapter 226 (compiled as Texas Civil Statutes, Article 3193o-2 (Vernon's 1948)); Acts, 1955, Fifty-fourth Legislature, Chapter 411 (compiled as Texas

Civil Statutes, Article 3193-1 (Vernon's 1956 Supplement)); Acts, 1951, Fifty-second Legislature, Chapter 481 (compiled as Texas Civil Statutes, Article 3196d (Vernon's 1952 Supplement)); Acts, 1925, Thirty-ninth Legislature, Chapter 174, Section 22 (compiled as Texas Penal Code, Article 427a (Vernon's 1948)); Section 5 of Acts, 1949, Fifty-first Legislature, Chapter 406 (compiled as Texas Civil Statutes, Article 3232a (Vernon's 1950 Supplement)); Acts, 1955, Fifty-fourth Legislature, Chapter 38 (compiled as Texas Civil Statutes, Article 3174b-1 (Vernon's 1956 Supplement)).

[Acts 1957, 55th Leg., p. 505, ch. 243, § 103.]

**Art. 5547-104. Emergency Clause**

The facts stated in the Purpose Section of this Code create an emergency and a case of imperative public necessity; therefore, the Constitutional Rule requiring bills to be read on three several days in each House is suspended, and this Code shall take effect on January 1, 1958.

[Acts 1957, 55th Leg., p. 505, § 104.]

## II. MENTAL HEALTH AND RETARDATION ACT

### ARTICLE 1. GENERAL PROVISIONS

#### Article

5547-201. Mental Health and Mental Retardation; General Provisions.

### ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

5547-202. Texas Department of Mental Health and Mental Retardation.

### ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

5547-203. Community Centers for Mental Health and Mental Retardation Services.

### ARTICLE 4. STATE GRANTS-IN-AID

5547-204. State Grants-in-Aid.

5547 to 5556. Repealed.

*The Texas Mental Health and Mental Retardation Act, consisting of articles 5547-201 to 5547-204, was enacted by Acts 1965, 59th Leg., p. 165, ch. 67, § 1, effective September 1, 1965.*

### ARTICLE 1. GENERAL PROVISIONS

#### Art. 5547-201. Mental Health and Mental Retardation; General Provisions

##### Purpose and Policy

Sec. 1.01. (a) It is the purpose of this Act to provide for the conservation and restoration of mental health among the people of this state, and toward this end to provide for the effective administration and coordination of mental health services at the state and local levels, and to provide, coordinate, develop, and improve services for the mentally retarded persons of this state to the end that they will be afforded the opportunity to develop their re-

spective mental capacities to the fullest practicable extent and to live as useful and productive lives as possible.

(b) The legislature declares that the public policy of this state is to encourage local agencies and private organizations to assume responsibility for the effective administration of mental health and mental retardation services, with the assistance, cooperation, and support of the Texas Department of Mental Health and Mental Retardation created by this Act.

#### Definitions

Sec. 1.02. In this Act,

(1) "department" means the Texas Department of Mental Health and Mental Retardation;

(2) "board" means the Texas Board of Mental Health and Mental Retardation;

(3) "commissioner" means the Commissioner of Mental Health and Mental Retardation;

(4) "local agency" means a city, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, state-supported medical school, or any organizational combination of two (2) or more cities, two (2) or more counties, two (2) or more hospital districts, two (2) or more school districts, or two (2) or more cities, counties, hospital districts and school districts;

(5) "mental health services" includes all services concerned with research, prevention and detection of mental disorders and disabilities and all services necessary to treat, care for, control, supervise and rehabilitate mentally disordered and disabled persons, including persons mentally disordered and disabled from alcoholism and drug addiction;

(6) "mentally retarded person" means any person other than a mentally disordered person, whose mental deficit requires him to have special training, education, supervision, treatment, care or control in his home or community, or in a state school for the mentally retarded;

(7) "mental retardation services" includes all services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, rehabilitation, care, treatment, supervision, and control of mentally retarded persons;

(8) "region" means the total geographical area covered by the local agencies participating in the operation of community centers established under this Act;

(9) "effective administration" includes continuous in-system planning and evaluation resulting in more efficient fulfillment of the purposes and policies of this Act.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965; Acts 1969, 61st Leg., p. 2010, ch. 688, § 1, eff. Sept. 1, 1969.]

## ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

### Art. 5547-202. Texas Department of Mental Health and Mental Retardation

#### Composition of Department

Sec. 2.01. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, a staff under the direction of the Commissioner and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

- (1) the Central Office of the Department;
- (2) the Austin State Hospital;
- (3) the San Antonio State Hospital;
- (4) the Terrell State Hospital;
- (5) the Wichita Falls State Hospital;
- (6) the Rusk State Hospital;
- (7) the Big Spring State Hospital;
- (8) the Confederate Women's Home;
- (9) the Kerrville State Hospital and its Legion Annex;
- (10) the Vernon Center and Annex;
- (11) the Austin State School and its Austin State School Annex;
- (12) the Travis State School;
- (13) the Mexia State School;
- (14) the Abilene State School;
- (15) the Lufkin State School;
- (16) the Richmond State School;
- (17) the Denton State School;
- (18) the Corpus Christi State School;
- (19) the Lubbock State School;
- (20) the Texas Research Institute of Mental Sciences;
- (21) the Dallas Neuropsychiatric Institute for Treatment, Research and Teaching;
- (22) the Beaumont State Center for Human Development;
- (23) the Amarillo State Center for Human Development;
- (24) the San Antonio State Center for Human Development;
- (25) the El Paso State Center for Human Development;
- (26) the Fort Worth State Mental Health Out-patient Clinic;
- (27) the Dallas State Mental Health Out-patient Clinic;
- (28) the Rio Grande State Center for Mental Health and Mental Retardation;

- (29) the San Angelo Center;
- (30) the Leander Rehabilitation Center.

#### Employees and Salaries

Sec. 2.01A. The number of employees and the salaries shall be as fixed in the general appropriations bill.

#### Members of Board

Sec. 2.02. The Board consists of nine members appointed by the Governor with the advice and consent of the Senate.

#### Terms of Office

Sec. 2.03. (a) Each member holds office for a term of six years and until his successor is appointed and qualified.

(b) Three of the first nine members appointed by the Governor shall serve terms expiring on January 31, 1967; three shall serve terms expiring on January 31, 1969; and three shall serve terms expiring on January 31, 1971.

#### Chairman

Sec. 2.04. The Chairman of the Board shall be the member so designated by the Governor.

#### Meetings of Board

Sec. 2.05. (a) The Board shall hold at least six regular meetings per year in the state capital on dates fixed by rule of the Board. The Board shall make rules providing for the holding of special meetings.

(b) Five members of the Board constitute a quorum for the transaction of business.

(c) All meetings of the Board are open to the public, except meetings to deliberate the appointment of the Commissioner.

#### Compensation of Members

Sec. 2.06. Each member is entitled to receive per diem compensation for each day he actually performs the duties of his office and to be reimbursed for actual and necessary expenses incurred in discharging his duties. The daily per diem compensation shall be as provided by appropriation.

#### Commissioner

Sec. 2.07. (a) The Board shall appoint a qualified person to serve as Commissioner.

(b) To be qualified for the office of Commissioner, a person must be a physician licensed to practice in this state and must have proven administrative experience and ability.

(c) The Commissioner holds office at the pleasure of the Board.

(d) The Commissioner is designated as the state mental health authority.

#### Deputy Commissioners

Sec. 2.08. (a) The Commissioner shall appoint a Deputy Commissioner for Mental Health Services and a Deputy Commissioner for Mental Retardation Services. Each appointment is subject to the approval of the Board.

(b) To be qualified for appointment as Deputy Commissioner for Mental Health Services, a person must be a physician licensed to practice in this state and have at least three years of specialized training in psychiatry.

(c) To be qualified for appointment as Deputy Commissioner for Mental Retardation Services, a person must have proven administrative ability and professional qualifications, including at least five years of broad experience and knowledge in the field of mental retardation.

#### Powers and Duties of Deputy Commissioners

Sec. 2.09. Repealed by Acts 1969, 61st Leg., p. 2010, ch. 688, § 6, eff. Sept. 1, 1969.

#### Advisory Committees

Sec. 2.10. The Board shall appoint a medical advisory committee and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department.

#### Separation of Departmental Authority

Sec. 2.11. (a) The Board shall formulate the basic and general policies, consistent with the purposes, policies, principles, and standards stated in this Act, to guide the Department in administering this Act.

(b) All of the administrative, rule-making, and decisional powers granted by this Act are vested in the Commissioner, subject to the basic and general policies formulated by the Board.

#### Effective Administration

Sec. 2.12. (a) The Commissioner is responsible for the effective administration of the programs and services of the Department.

(b) The Commissioner shall, with the approval of the Board, establish within the Department an organizational structure which will promote the effective administration of this Act.

#### Contracts

Sec. 2.13. The Department may cooperate, negotiate and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians and persons to plan, develop and provide community-based mental health and mental retardation services.

#### Gifts, Grants, and Donations

Sec. 2.14. The Department may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving the mental health and mental retardation services available to the people of this state.

#### Federal Grants

Sec. 2.15. The Department may negotiate with any agency of the United States in order to obtain grants to assist in the expansion and improvement of mental health and mental retardation services in this state.

**Transfer of Functions, Property, Etc.**

Sec. 2.16. (a) All powers, duties, and functions relating to the commitment, care, treatment, maintenance, education, training, and rehabilitation of mentally ill or mentally retarded persons, or relating to the administration of mental health or mental retardation services, previously vested in the Board for Texas State Hospitals and Special Schools and in the Division of Mental Health and the Office of Mental Health Planning of the State Department of Health, are transferred to the Texas Department of Mental Health and Mental Retardation.

(b) All land, buildings, facilities, property, records, and personnel used by the Board for Texas State Hospitals and Special Schools and by the Division of Mental Health and the Office of Mental Health Planning of the State Department of Health in conjunction with such powers, duties, and functions are transferred to the Texas Department of Mental Health and Mental Retardation. Provided, however, this transfer shall not apply to the buildings presently occupied by the Texas State Department of Health.

**Service Programs**

Sec. 2.17. (a) From funds available to it the Department is authorized to provide mental health and mental retardation services through the operation of halfway houses, community centers, and other mental health and mental retardation services programs.

(b)(1) From funds available to it the Department is authorized to provide mental health and mental retardation services through the operation of sheltered workshops and to contract with individuals or public or private entities for all or any part of such services.

(2) The Department is authorized to contract with individuals or public or private entities for the sale of goods and services produced or made available by the sheltered workshop programs. The goods and services may be sold on a cash or credit basis.

(3) An operating fund may be established for each sheltered workshop operated by the Department, and any money derived from gifts, grants, and donations received for sheltered workshop purposes and all proceeds from the sale of sheltered workshop goods and services shall be deposited in the operating fund. Any operating fund shall be maintained in a national or state bank which is a member of the Federal Deposit Insurance Corporation. Money in the operating funds may only be expended in the operation of sheltered workshops for the purchase of supplies, materials, services, and equipment; for the payment of salaries and wages to participants and employees; for the construction, maintenance, repair, and renovation of facilities and equipment; and for the establishment and maintenance of a petty cash fund not to exceed \$100.

(4) It is intended that the sheltered workshop authority and program as enumerated

above in Subsection (a) and Subdivisions (1), (2) and (3) of Subsection (b) shall not conflict with the authority and/or jurisdiction of community centers for mental health and mental retardation as set forth in Sections 3.01 through 3.15 and Sections 4.01 through 4.04 of the Texas Mental Health and Mental Retardation Act (Articles 5547-203 and 5547-204, Vernon's Texas Civil Statutes).

**Research Institutes**

Sec. 2.18. (a) The authority for the operation of the Houston State Psychiatric Institute for Research and Training<sup>1</sup> is transferred to the Department.

(b) The Department may establish research institutes devoted to research and training in support of the development and expansion of mental health and mental retardation services in this state. The research institutes may be affiliated with major medical centers, medical schools, and universities of the state.

(c) The Department may accept gifts or grants of land and may contract for the construction of buildings and facilities at any site selected for the location of a research institute, or the Department may enter into any contract or leasing arrangement with any federal, state, or local agency, or with any person or other private entity, for the use of buildings and facilities.

(d) The Department may administer and operate research institutes with funds donated by federal, state, and local agencies, and by persons and other private entities, and with any money that may be appropriated by the legislature.

<sup>1</sup> Name changed to Texas Research Institute of Mental Sciences.

**Facilities for Mentally Retarded**

Sec. 2.19. The Department may designate the facility in which any mentally retarded person under its jurisdiction is placed, and may designate any facility or part thereof under its management and control as a special facility for the diagnosis, special training, education, supervision, treatment, care or control of mentally retarded persons. The Department is authorized to maintain at facilities under its control and management day classes for the convenience and benefit of the mentally retarded persons of the communities in which such facilities are located when the mentally retarded persons are not capable of being enrolled in regular or special classes of the public school system.

**Return of Committed Mentally Retarded Persons to State of Residence**

Sec. 2.20. (a) The Department may return a non-resident mentally retarded person committed to a facility for the mentally retarded in this state to the proper agency of the state of his residence.

(b) The Department may permit the return of any resident of this state who is committed to a facility for the mentally retarded in another state.

(c) The Department is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the state of their residence of persons committed to facilities for the mentally retarded in this or other states.

(d) The superintendent of a facility for the mentally retarded under the control and management of the Department may detain a mentally retarded person returned to this state from the state of his commitment for a period not to exceed ninety-six (96) hours pending order of the court in commitment proceedings in this state.

(e) All expenses incurred in returning committed mentally retarded persons to other states shall be paid by this state. The expense of returning mentally retarded residents of this state shall be borne by the states making the return.

#### Cooperation of Other State Agencies

Sec. 2.21. At the request of the Department, all departments and agencies and all officers and employees of the state shall cooperate with the Department in activities consistent with their functions. This does not require other departments and agencies to serve the Department in activities inconsistent with their functions or with the authority of their offices or with the laws of this state governing their activities.

#### Utility Easements

Sec. 2.22. The Department may grant easements, on terms and conditions deemed by the Department to be in the best interest of the state, across any land held by the Department, for the construction of water, natural gas, telephone, telegraph, and electric power lines.

#### Data on Condition and Treatment of Persons

Sec. 2.23. (a) Any person, hospital, sanatorium, nursing or rest home, medical society, or other organization may provide information, interviews, reports, statements, memoranda, or other data related to the condition and treatment of any person to the State Department of Mental Health and Mental Retardation, medical organizations, hospitals and hospital committees, to be used in the course of any study for the purpose of reducing mental disorders and disabilities, and no liability of any kind or character for damages or other relief arises against any person or organization for providing such information or material, or for releasing or publishing the findings and conclusions of such groups to advance mental health and mental retardation research and education, or for releasing or publishing generally a summary of such studies.

(b) The Department, medical organizations, hospitals and hospital committees may use or publish these materials only for the purpose of advancing mental health and mental retardation research and education, in the interest of reducing mental disorders and disabilities, ex-

cept that summaries of such studies may be released for general publication.

(c) The identity of any person whose condition or treatment has been studied shall be kept confidential and shall not be revealed under any circumstances. All information, interviews, reports, statements, memoranda, or other data furnished by reason of this Act and any findings or conclusions resulting from such studies are declared to be privileged.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1; Acts 1967, 60th Leg., p. 155, ch. 82, § 1; Acts 1967, 60th Leg., p. 543, ch. 239, § 1; Acts 1967, 60th Leg., p. 577, ch. 261, § 1; Acts 1967, 60th Leg., p. 774, ch. 326, § 1; Acts 1969, 61st Leg., p. 2010, ch. 688, § 2; Acts 1971, 62nd Leg., p. 1589, ch. 432, § 1; Acts 1971, 62nd Leg., p. 2089, ch. 643, § 1; Acts 1973, 63rd Leg., p. 234, ch. 110, § 1, eff. Aug. 27, 1973.]

#### Transfer of facilities:

Sections 1 and 5 of Acts 1969, 61st Leg., p. 848, ch. 282, provided:

"Sec. 1. Effective September 1, 1969, the custody, management, and control of the land, buildings, and facilities comprising the hospital complex known as McKnight State Tuberculosis Hospital is transferred from the State Department of Health to the Texas Department of Mental Health and Mental Retardation for the support, maintenance, and treatment of patients for whom the Texas Department of Mental Health and Mental Retardation is responsible.

"Sec. 5. Effective September 1, 1969, the name of McKnight State Tuberculosis Hospital is changed to the San Angelo Center."

### ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

#### Art. 5547-203. Community Centers for Mental Health and Mental Retardation Services

##### Agencies Authorized to Establish and Operate Community Center; Contracts

Sec. 3.01. (a) Local agencies which may establish and operate community centers are a county, a city, a hospital district, a school district, or any organizational combination of two (2) or more of these. When community centers are established by an organizational combination, the governing bodies of such organizational combination shall enter into a contract between or among them which shall stipulate:

(1) the kinds and number of community centers, as that term is defined in subsection (b) below, which are to be established, and

(2) whether the board of trustees shall consist of not less than five (5) nor more than nine (9) members selected from the governing bodies of the organizational combination, or of not less than five (5) nor more than nine (9) members to be appointed from the qualified voters of the region to be served.

This contract may be renegotiated or amended from time to time as necessary to provide for the establishment of additional community centers or to change the method of establishing a board of trustees.

(b) As used in this Act, a "community center" may be:

(1) a community mental health center, which provides mental health services; or



(2) a community mental retardation center, which provides mental retardation services; or

(3) a community mental health and mental retardation center, which provides mental health and mental retardation services.

#### Boards of Trustees

Sec. 3.02. (a) The board of trustees of community centers established by a single city, county, hospital district or school district may be the governing body of the single city, county, hospital district or school district, or that governing body may appoint from among the qualified voters of the region to be served a board of trustees consisting of not less than five (5) nor more than nine (9) persons. If the board of trustees is appointed from the qualified voters of the region to be served, the terms of the members thereof shall be staggered by appointing not less than one-third ( $\frac{1}{3}$ ) nor more than one-half ( $\frac{1}{2}$ ) of the members for one (1) year, or until their successors are appointed, and by appointing the remaining members for two (2) years, or until their successors are appointed. Thereafter, all appointments shall be for a two (2) year period, or until their successors are appointed. Appointments made to fill unexpired terms shall be for the period of the unexpired term, or until a successor is appointed.

(b) Boards of trustees of community centers established by an organizational combination shall consist of not less than five (5) nor more than nine (9) members selected from the membership of the governing bodies of the organizational combination, or such governing bodies may jointly appoint a board of trustees from among the qualified voters of the region to be served in the manner authorized in Section 3.02(a) above.

#### Saving Clause

Sec. 3.03. This Act shall not affect the validity of community centers and boards of trustees of such centers established and appointed before it becomes effective; provided, however, this provision shall not be construed to preclude reconstitution of community centers and the board of trustees of such centers as authorized by this Act. This Act shall not affect the validity of board selection committees appointed by an organizational combination of more than six (6) local agencies under authority of Section 3.02(a), Acts 59th Legislature, Regular Session, 1965, as amended.<sup>1</sup> All other board selection committees are abolished and appointments to fill vacancies on boards of trustees of these centers shall be made by the governing bodies which participated in the establishment of the centers.

<sup>1</sup> Section 3.02(a) of this article.

#### Meetings

Sec. 3.04. The boards of trustees shall make rules to govern the holding of regular and special meetings. All meetings are open to the

public, except meetings to deliberate the appointment of a director. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business. The board shall keep a record of its proceedings, and the record is open to inspection by the public.

#### Administration

Sec. 3.05. The board of trustees is responsible for the administration of community centers.

#### Advisory Committees

Sec. 3.06. Boards of trustees may appoint advisory committees, medical committees and other committees to advise the board on matters relating to the administration of mental health and mental retardation services. No such committee shall consist of less than five (5) members; and the appointment of such committees shall not relieve the board of trustees of final responsibility and accountability as provided in this Act.

#### Director

Sec. 3.07. The board of trustees shall appoint a director for each community center. The board may delegate powers to the director subject to the policy direction of the board.

#### Personnel

Sec. 3.08. The board or director may employ and train personnel for the administration of the various programs and services of a community center. The board shall provide appropriate rights, privileges and benefits to the employees of a community center consistent with those rights, privileges and benefits available to employees of the governing bodies which establish the center and is authorized to provide and may provide workmen's compensation benefits. The number of employees and their salaries shall be as prescribed by the board of trustees, as approved by the governing body or bodies of the local agency establishing the center.

#### Contribution of Local Agencies

Sec. 3.09. Each participating local agency may contribute lands, buildings, facilities, personnel and funds for the administration of the various programs and services of a community center.

#### Gifts, Grants, Donations

Sec. 3.10. A community center may accept gifts, grants, and donations of money, personal property, and real property for use in the administration of its programs and services.

#### Buildings, Facilities

Sec. 3.11. A community center may construct buildings and facilities.

#### Services

Sec. 3.12. The board of trustees may make rules, consistent with the purposes, policies, principles, and standards provided by this Act

to regulate the administration of mental health or mental retardation services by a community center, and may make contracts with local agencies and with qualified persons and organizations to provide portions of these services. A community center may provide services to persons voluntarily seeking assistance and to persons legally committed to that community center. A board of trustees may, with the approval of the State mental health authority, contract with the governing bodies of other counties and cities to provide mental health and mental retardation services to residents of such cities and counties.

#### Recruitment, Training, Research

Sec. 3.13. A community center may engage in research and in recruitment and training of personnel in support of its programs and services and may make contracts for these purposes.

#### Fees for Services

Sec. 3.14. A community center shall provide services free of charge to indigent persons. It shall charge reasonable fees, to cover costs, for services provided to non-indigent persons. In collecting fees for the treatment of non-indigent persons, a community center has the same rights, privileges, and powers granted by law to the Texas Department of Mental Health and Mental Retardation. The county or district attorney of counties where community centers are located shall, when requested by the director of a community center, represent the community center in the collection of fees for services provided non-indigent persons.

#### Cooperation of Department

Sec. 3.15. The Department shall provide to local agencies, boards of trustees and directors assistance, advice and consultation in the planning, development and operation of community centers.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965; Acts 1967, 60th Leg., p. 223, ch. 122, § 1, eff. May 5, 1967; Acts 1967, 60th Leg., p. 490, ch. 218, § 2, eff. May 19, 1967; Acts 1969, 61st Leg., p. 2010, ch. 688, § 3, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1512, ch. 546, § 1, eff. Aug. 27, 1973.]

## ARTICLE 4. STATE GRANTS-IN-AID

### Art. 5547-204. State Grants-in-Aid

#### Rules and Regulations of the Department

Sec. 4.01. (a) The Department shall prescribe such rules, regulations and standards, not inconsistent with the Constitution and laws of this State, as it considers necessary and appropriate to insure adequate provision of mental health and mental retardation services by community centers.

(b) Before any rule, regulation or standard is adopted the Department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations and standards adopted by the Department under this Section

shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(d) A copy of these rules shall be sent to each community center established in this State.

#### Plan

Sec. 4.02. As soon as possible after its establishment the board of trustees shall submit to the Department:

(1) a copy of the contract between the participating local agencies, if applicable;

(2) a plan within the projected financial, physical and personnel resources of the region to be served to develop and make available to the residents of the region an effective mental health or mental retardation services program, or both, through a community center or centers.

#### Eligibility for Grants-in-Aid

Sec. 4.03. A community center is eligible to receive State grants-in-aid if it qualifies according to the rules and regulations of the Department. It is specifically provided, however, that the Department may require that such grants of State funds be matched by local support in such proportions and amounts as may be determined by the Department. For the purpose of calculating the local share of the operating costs of a community center, patient fee income, services and facilities contributed by local community centers may be counted as local support. To facilitate the administration of such funds, the Department may make periodic allocations of such grants to community centers on the basis of operating budgets submitted to it by the community centers in such form as the Department may require, but shall, periodically during the fiscal period covered by such operating budgets, make such adjustments, upward or downward, as may be necessary equitably to apportion such operating costs between the State government and the community centers.

#### Auditing Procedures

Sec. 4.04. The board of trustees of a community center, as a condition precedent to its receiving further grants under this Act, shall annually have the accounts of the center audited by a Texas certified or public accountant licensed by the Texas State Board of Public Accountancy. Such audit shall meet at least the minimum requirements as shall be, and in such form as may be, prescribed by the Department and approved by the State Auditor. A copy of each such annual audit, approved by the board of trustees of the community center, shall be filed by the community center with the Department on such date as the Department may specify. Where the board of trustees declines or refuses to approve the audit report, it shall nevertheless file with the said Department a copy of the audit report with its statement detailing its reasons for failure to approve the

report. In addition to the copy furnished the Department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee. The Commissioner and the State Auditor, on behalf of the Department and the Legislative Audit Committee, respectively, shall have access to all vouchers, receipts, journals and other records as either may deem needed and appropriate for the review and analysis of audit reports.

[Acts 1965, 59th Leg., p. 165, ch. 67, § 1, eff. Sept. 1, 1965; Acts 1969, 61st Leg., p. 2010, ch. 688, § 4, eff. Sept. 1, 1969.]

Acts 1965, 59th Leg., p. 173, ch. 67, § 1, which enacted the Texas Mental Health and Mental Retardation Act, provided in section 2: "Hospital Board Abolished. The Board for Texas State Hospitals and Special Schools is abolished. This does not preclude the Governor from appointing one or more members of that board to the Texas Board of Mental Health and Mental Retardation."

Arts. 5547 to 5549. Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23

Arts. 5550 to 5554. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Arts. 5555, 5556. Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23

### III. MISCELLANEOUS PROVISIONS

#### Article

5557 to 5561. Repealed.

5561a. Apprehension, Arrest, and Trial of Persons Not Charged with Criminal Offense; Information; Warrant; Notice of Hearing.

5561b. Repealed.

5561b-1. Repealed.

5561c. Alcoholism.

5561c-1. Narcotic Addicts; Commitment; Treatment.

5561d. Dallas Neuropsychiatric Institute.

5561e. Commitment and Admission of Mentally Ill and Mentally Retarded Persons to Community Centers.

5561f. Interstate Compact on Mental Health.

5561g. Building and Improvement Program.

Arts. 5557 to 5561. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Art. 5561a. Apprehension, Arrest, and Trial of Persons Not Charged With Criminal Offense; Information; Warrant; Notice of Hearing

Secs. 1 to 5. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103.

#### Validation of Proceedings, Judgments, and Orders

Sec. 6. All actions, proceedings, judgments and orders made and entered by any probate or county court of this State pursuant to which any person has been adjudged insane and committed to a state hospital for the insane, are hereby validated and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

#### Contracts and Conveyances by Persons Subsequently Adjudged Incompetent

Sec. 7. A contract valid on its face, made with, or likewise a conveyance made by a per-

son, who at the time has not been legally adjudged to be of unsound mind, or otherwise incompetent, and who is subsequently shown to have been insane, or otherwise incompetent, at the time of the execution of such contract or conveyance, shall not be set aside or avoided where any such contract or conveyance has been executed in good faith in whole or in part, and was entered into in good faith without fraud or imposition and for a valuable consideration, without notice of such infirmity, unless the parties to such contract or conveyance shall have been first equitably restored to their original position. The provisions of this Article shall not apply in cases where one of the parties to any such contract or conveyance is insane, and has been so adjudged by a court of competent jurisdiction prior to the date of such contract or conveyance.

#### Pending Proceedings or Actions Unaffected; Partial Invalidity

Sec. 8. This Act shall not affect any proceedings or action pending in any court, of competent jurisdiction, on the effective date hereof and any such pending proceedings or action shall be determined in accordance with pre-existing law.

#### Unconstitutionality

Sec. 9. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding any invalid portions.

[Acts 1937, 45th Leg., p. 1049, ch. 446; Acts 1957, 55th Leg., p. 505, ch. 243, § 103.]

The repealed sections related to the issuance of a warrant for the apprehension of a person of unsound mind, to a hearing and determination of the matter, and to restoration hearings. The sections were derived from Acts 1937, 45th Leg., p. 1049, ch. 446. Prior to the repeal, section 2 was amended by Acts 1941, 47th Leg., p. 635, ch. 383, § 1, and section 4 was amended by Acts 1941, 47th Leg., p. 562, ch. 356, § 1.

Arts. 5561b, 5561b-1. Repealed by Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Art. 5561c. Alcoholism

#### Purpose

Sec. 1. The purpose of this Act is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcoholism, which shall co-ordinate the efforts of all interested and affected State and local agencies; develop educational and preventive programs; and promote the establishment of constructive programs for treatment aimed at the reclamation, rehabilitation and successful re-establishment in society of alcoholics. Alcoholism is hereby recognized as an illness and a public health problem affecting the general welfare and the economy of the State. Alcoholism is further recognized as an illness subject to treatment and abatement and the sufferer of alcoholism is recognized as one worthy of treatment and rehabilitation. The need for

proper and sufficient facilities, programs and procedures within the State for the control and treatment of alcoholism is hereby recognized. It is hereby declared that the procedure for commitment of alcoholics as hereinafter provided for is not punitive but is a committal for treatment of an illness affecting not only the individual involved but the public welfare as well.

#### Construction of the Act

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

#### Definitions

Sec. 3. As used in this Act,

(a) "Commission" means the Texas Commission on Alcoholism.

(b) "Hospital Board" means the Board for Texas State Hospitals and Special Schools.

(c) An "alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self control with respect to the use of such beverages, or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety or welfare.

(d) "Alcoholism," as used herein, has reference to any condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

#### Texas Commission on Alcoholism

Sec. 4. (a). Commission established. There is hereby created a Commission to be known as the Texas Commission on Alcoholism, hereinafter called the Commission. The Commission shall consist of six (6) members to be appointed by the Governor, with the advice and consent of the Senate, from citizens of the State who are known to have knowledge of and an interest in the subject of alcoholism, at least one of whom must be a physician and at least three of whom shall have had personal experience as excessive users of alcohol. For the initial appointments as above provided for, the Governor shall designate two appointed members for each of the terms of two, four and six years, respectively, from the effective date of this Act. Each two years thereafter, the Governor, with the advice and consent of the Senate, shall appoint two members of the Commission for a term of six (6) years to succeed the members whose terms then expire. Members shall serve until their successors have qualified. Any vacancy occurring in the membership of the Commission shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired portion of the vacated term.

(b). Officers of the Commission. The Governor shall designate a chairman of the first Commission to serve one year. The members of the Commission shall thereafter annually

elect from their number a chairman and a vice-chairman. The members of the Commission may elect one of their number as secretary, or they may designate the executive director, appointed as herein provided, as such secretary.

(c). Meeting of the Commission and Per Diem Pay. The Commission shall meet quarterly, at such other times as may be necessary, at the call of the chairman, or at the request of three members, for the performance of their duties, not to exceed twenty-four (24) days in all in any one year. The members shall receive Twenty Dollars (\$20) per diem plus their actual and necessary expenses in connection with their attendance at such meetings. Four members of the Commission shall constitute a quorum for the transaction of business. In addition to the meetings herein authorized, the Commission may authorize its members to visit places within the State or in other States and engage in travel for the purpose of carrying out their duties as provided in this Act. For such travel, the members of the Commission shall receive the same per diem and expenses as they receive for their attendance at meetings.

(d). Commission Employees. The Commission may employ an executive director at an annual salary of Seven Thousand Five Hundred Dollars (\$7,500) and such other employees as it deems necessary to properly discharge its duties under this Act.

#### Duties and Functions of the Commission

Sec. 5. The Commission shall have only the following duties and functions:

(1) Carry on a continuing study of the problems of alcoholism in this State, and seek to focus public attention on such problems.

(2) Establish cooperative relationships with other State and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups.

(3) Promote or conduct educational programs on alcoholism; purchase and provide books, films, and other educational material; and furnish funds or grants to the Texas Education Agency, institutions of higher education, and medical schools for study, research, and modernized instruction regarding the problems of alcoholism.

(4) Provide for treatment and rehabilitation of alcoholics and allocate funds for:

(a) The establishment of local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five per cent (75%) of the total operating cost of such clinics operated by a city or a county.

(b) Providing treatment for those alcoholics needing from fifteen (15) to ninety (90) days hospitalization, whether voluntary patients, or admitted on court order, by furnishing the Hospital Board all of the funds needed for the proper operation of segregated wards for treatment of such patients; such funds and necessary personnel to be in addition to all funds and personnel provided the Hospital Board in the regular Departmental Appropriation Bill.

(c) Contracting with hospitals or institutions not under its control for the care, custody and treatment of alcoholics.

(d) Providing for the detention, care, and treatment of recalcitrants and alcoholics with long police court records, by furnishing funds for the operation of farm or colony type facilities under the provisions of 4(a) or of 4(b).

#### Cooperation by Other Departments

Sec. 6. To effectuate the purpose of this Act and to make maximum use of existing facilities and personnel, it shall be the duty of all departments and agencies of the State government and of all officers and employees of the State, when requested by the Commission, to cooperate with it in all activities consistent with their proper function. Nothing herein shall be construed as giving the Commission control over existing facilities, institutions or agencies, or as requiring such facilities, institutions or agencies to serve the Commission inconsistently with their functions, or with the authority of their offices, or with the laws and regulations governing their activities; or as giving the Commission power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to adequately perform.

#### Power to Accept Gifts

Sec. 7. The Commission may accept gifts, grants, or donations of money or of property from private or public sources to effectuate the purpose of this Act. Any and all funds so donated shall be placed in the State Treasury in a special fund called the Texas Commission on Alcoholism Fund and expended in the same manner as other State moneys are expended, upon warrants drawn by the Comptroller upon the order of the Commission. Any and all of said moneys are hereby appropriated for the purpose of carrying out this Act.

#### Rules and Regulations

Sec. 8. The Commission shall be responsible for the adoption of all policies and shall make all rules and regulations appropriate to the proper accomplishment of its functions under this Act and to the allocation of its funds.

#### Admission and Certification of Alcoholics

Sec. 9. (a) The county judge of the county where an alleged alcoholic resides may certify or remand him or her to the custody of the Commission or its authorized representative for the treatment and rehabilitation of such alcoholic, upon proper proof as hereinafter provided, and with the consent in writing of the Commission or its authorized representative.

(b) The Court may remand an alcoholic to the Commission or its authorized representative for treatment when it is properly shown to the court upon petition or application filed by the alleged alcoholic's husband, wife, child, mother, father, next of kin, next friend, or the county health officer, that such a person is an alcoholic, is a resident of the county, is over eighteen years of age, and is not capable of, or is unfit properly to conduct himself or herself, or to conduct and look after his or her affairs or is dangerous to himself, or others, or has lost the power of self-control because of use of alcohol. Such a petition or application must show that the alleged alcoholic is in actual need of care and treatment and that his or her detention, care and treatment would improve his health.

(c) Upon filing of a petition or application, the court shall set a day for the hearing, which hearing must be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition. The alleged alcoholic shall be personally served with a copy of the petition or application and the order fixing the time of hearing of the same by the sheriff of the county in which he is found and the court may proceed to hear the cause at the stated time, with or without the presence of the alleged alcoholic and with or without an answer by him, provided such service is perfected at least three (3) days prior to the hearing. The court shall inform relatives of the alleged alcoholic and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or upon request, require an alleged alcoholic to be examined by the county health officer, or by other physicians, as the court may direct, the results of which examination to be considered by the court at the hearing of the application for commitment. If in the county court in which a petition or application is filed, a Certificate of Medical Examination for Alcoholism is filed showing that the proposed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court; provided, however, that in no event shall the proposed patient be denied the hearing prescribed above to be held

not less than five (5) days and no more than fourteen (14) days from the filing of the petition.

(d) If the alleged alcoholic admits the allegations of the application, or if the court finds that the material allegations of the application have been proven, it shall issue the proper certificate for his or her commitment or remand to the Commission or its authorized representative for such confinement and treatment as the Commission shall direct. Upon such a finding, the court shall order that he or she be remanded to the Commission or its authorized representative for a period of not less than fifteen (15) days nor more than three (3) months as the necessity of the case may require, subject, however, to earlier discharge at the discretion of the Commission.

(e) The Commission shall by rule provide a method of notification by the county court or the clerk thereof to the Commission of initiation of proceedings under this Section and the order of the court therein, and shall provide for notification of the court before the date set for the hearing of a petition or application for certification whether it will accept custody of such person should the court so order.

#### Appeals from Decisions Committing Persons to the Commission

Sec. 10. (a) Any person brought before any court on petition for commitment as hereinafter provided, may, within five (5) days, appeal from a decision of the county court committing him or her, to the district court upon his or her giving bond with sufficient sureties to be approved by the committing judge in such form as may be fixed by said judge, the bond being conditioned upon his or her appearance to abide the results of the appeal.

(b) On appeal, trial shall be de novo and the appellant shall be entitled to trial by jury.

#### Habeas Corpus by Persons Committed to the Commission

Sec. 11. If a writ of habeas corpus to be obtained in behalf of a person committed to and confined by an order of a court and it appears at the hearing on the return of such writ that such person may properly be discharged, or if the person's condition is such that it will be safe for him or her or others for him or her to be released, the judge before whom the hearing is held shall so direct; but if it appears from the condition of such person that he or she requires treatment, he or she shall be remanded to the care and custody of the Commission or its authorized representative for such treatment.

#### Commitment by Courts

Sec. 12. The judge of any court of this State having jurisdiction of misdemeanor cases may, upon finding a person guilty of any violation of the law, which violation is a misdemeanor resulting from such person's chronic and habitual use of alcohol, remand such person over eighteen (18) years of age to the

Commission or its authorized representative for care and treatment for a period not to exceed ninety (90) days, in lieu of the imposition of a sentence, if and when special facilities are available for treatment of such cases, and with notice from the Commission that such facility will receive such person as a patient. No person may be so committed who in the opinion of the judge has exhibited definite criminal tendencies, or is feeble-minded or psychotic. Appeals from such orders of the court may be taken in the same manner as provided for appeals from any other judgment of such court.

#### Voluntary Patients

Sec. 13. Under such rules as it may prescribe the Commission or its authorized representative may receive as a patient for treatment, any alcoholic resident of this State against whom no criminal charges are pending, and who shall voluntarily apply for treatment, and may retain for not more than ninety (90) days and treat and restrain such person in the same manner as if committed by order of court, provided, however, that such person must be released within ten (10) days after receipt in writing of notice from such person of his or her intention or desire to leave. The Commission or its authorized representative may refuse admittance to any applicant who has been a patient receiving treatment solely for alcoholism in any Texas State Hospital and who has been released therefrom within twelve (12) months immediately preceding his application for admittance, if, in the opinion of the Commission, no useful purpose would be served by the admission of such applicant.

#### Probation and Discharge

Sec. 14. (a) Any person committed to the custody of the Commission or its authorized representative may, notwithstanding the terms of any order of commitment, be permitted by the Commission or its authorized representative to go at large on probation and without restraint for such time and under such condition as the Commission shall judge best.

(b) Any person, whether a voluntary patient or committed by a court, whose actions, attitude and behavior cause the Commission or its authorized representative to believe that such a person is not benefiting by care and treatment, may be discharged at any time at the discretion of said Commission or representative, notwithstanding the terms of any order of commitment.

#### Costs of Commitment and Support

Sec. 15. The provisions of law with respect to the costs of commitment and the cost of support, including methods of determination of the persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the State to secure reimbursement of actual cost, applicable to the commitment to and support of mentally ill persons in State Hospitals, shall apply with equal force in respect to each item of expense incurred by the

State in connection with the commitment, care, custody, treatment and rehabilitation of any person securing care and treatment under this Act. All funds so collected are hereby appropriated to the Commission for the purpose of this Act.

#### Rights as Citizens

Sec. 16. No person who is committed for treatment under the provisions of this Act, either through voluntary application or involuntary procedure, shall forfeit or be abridged thereby of any of his or her rights as a citizen of the United States or of the State of Texas. The record of any individual committed for treatment, guidance and rehabilitation shall be confidential and the contents thereof shall not be divulged except on order of a court of competent jurisdiction.

#### Commitment Proceedings for Mentally Ill Persons

Sec. 17. The Commission or its representative shall bring commitment proceedings, in the court in the county wherein the person involved is restrained, for commitment to such institutions as such court may direct, of any person who has been committed to the custody and control of the Commission and who is found to be mentally ill.

#### Financing of Operations

Sec. 18. The cost of financing the operations of the Texas Commission on Alcoholism shall be borne with funds as provided by Section 7 of this Act and such other funds as the Legislature may from time to time appropriate for this purpose. Funds for the operation of local councils on alcoholism shall be expended only if matched locally.

#### Appropriation

Sec. 19. All funds received and deposited in the State Treasury under the provisions of this Act to the Texas Commission on Alcoholism Fund are hereby appropriated for the biennium ending August 31, 1955, to the Commission for the purposes set out in this Act, including salaries and all other operating and contingent expenses, provided that no funds may be spent without the prior approval of budgets of the Commission by the Governor with the advice of the Legislative Budget Board; provided, however, that salaries shall not exceed those for comparable positions in other State Departments.

#### Constitutionality

Sec. 20. If any Section, subdivision or clause of this Act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Act.

[Acts 1953, 53rd Leg., p. 983, ch. 411; Acts 1957, 55th Leg., p. 794, ch. 329 § 1; Acts 1959, 56th Leg., p. 476, ch. 204, § 1; Acts 1965, 59th Leg., p. 998, ch. 485, § 1; Acts 1967, 60th Leg., p. 2094, ch. 783, § 1, eff. Aug. 28, 1967.]

### Art. 5561c-1. Narcotic Addicts; Commitment; Treatment

#### Persons Subject to Commitment; Duration

Sec. 1. Any person found to be addicted to narcotics in accordance with the provisions of this Act shall be committed to a mental hospital for such period of time as may be necessary to arrest the person's addiction to narcotics.

#### Petition

Sec. 2. (a) A sworn petition for the indefinite commitment of a person to a mental hospital may be filed with the county court having jurisdiction of commitments of the county in which he resides or is found. The petition may be filed by any adult person, or by the county attorney and shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF \_\_\_\_\_, AS A PERSON ADDICTED TO NARCOTIC DRUGS." The petition shall contain the following statements upon information and belief:

- (1) name and address of the proposed patient;
- (2) name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian;
- (3) name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient;
- (4) that the proposed patient is addicted to narcotic drugs and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(b) The petition shall be accompanied by the sworn statements of two physicians who have examined the proposed patient within the five days immediately preceding the filing of the petition, stating the opinion of the examining physician that the proposed patient is addicted to narcotic drugs. The sworn statements shall include the physician's medical opinion as to whether hospitalization of the proposed patient because of addiction or immediate restraint of the proposed patient to prevent injury to himself or others, or both, are necessary.

(c) When a petition and the required statement by a physician are filed, the county judge shall set a date for the hearing to be held within 14 days of the filing of the petition, and shall appoint an attorney ad litem to represent the proposed patient, unless the proposed patient retains an attorney of his own choosing.

#### Jury Trial; Waiver

Sec. 3. (a) The proposed patient shall not be denied the right to trial by jury. A jury shall determine the issues in the case if no waiver of jury trial is filed, or if jury trial is demanded by the proposed patient or his attorney at any time prior to the termination of the hearing, whether or not a waiver has been filed. Proof shall be required as in criminal cases. The jury shall be summoned and impan-

eled in the same manner as in similar cases in the county court.

(b) Waiver of trial by jury, if any, shall be in writing under oath and may be signed and filed at any time subsequent to service of the petition and notice of hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient and by the attorney ad litem appointed to represent the proposed patient or his next of kin, or by the attorney retained by the proposed patient.

#### Liberty or Custody Pending Hearing

Sec. 4. Pending the hearing on the petition the proposed patient may remain at liberty unless he is already a patient in a mental hospital or is placed under protective custody.

#### Sufficiency of Evidence

Sec. 5. No person shall be committed to a mental hospital under the provisions of this Act except upon the basis of competent medical or psychiatric testimony.

#### Findings

Sec. 6. (a) The court or the jury, as the case may be, shall determine whether the proposed patient is addicted to narcotics.

(b) The court or jury, as the case may be, shall include in its findings determinations as to whether the proposed patient requires hospitalization or restraint, or both.

(c) The court shall enter on its docket the findings of the court or jury on this issue.

#### Order for Discharge or Commitment

Sec. 7. (a) If the court or the jury, as the case may be, finds that the proposed patient is not addicted to narcotics, the court shall enter an order denying the petition and discharging the proposed patient.

(b) If the court or the jury, as the case may be, finds that the proposed patient is addicted to narcotics and should be hospitalized and restrained, the court shall order that the addicted person be committed as a patient to a mental hospital for an indefinite period or until he is discharged by the head of the mental hospital.

#### New Trial

Sec. 8. For good cause shown, the county judge, within two days after entering his order of commitment, may set aside his order and grant a new trial to the person ordered committed. A motion for new trial is not prerequisite to appeal from the order of the county court.

#### Appeal

Sec. 9. (a) The person ordered committed may appeal the order of commitment by filing written notice thereof with the county court within 30 days after the order of commitment is entered.

(b) When notice of appeal is filed, the clerk shall immediately send a certified transcript of

the proceedings to the district court of the county.

(c) For good cause shown, the county judge may stay the order of commitment pending the appeal upon posting of a bond.

(d) The appeal from the county court shall be by trial de novo in the district court in the same manner as cases appealed from the justice court to the county court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury, otherwise the trial shall be before the court without a jury. Such cases shall be advanced on the docket and shall be given a preference setting over all other cases.

#### Authorized Places of Commitment

Sec. 10. In the order of commitment, the court shall commit the patient to a designated

(1) state mental hospital upon being advised by the head of the state mental hospital that space is available and that the patient will be admitted,

(2) private mental hospital, or

(3) agency of the United States operating a mental hospital.

#### Commitment to Private Hospital

Sec. 11. The court may order a patient committed to a private mental hospital at no expense to the state upon:

(1) application signed by the patient or by his guardian requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant, and

(2) a written statement by the head of the private mental hospital that the hospital is equipped to accept responsibility for the patient in accordance with the provisions of this Act.

#### Commitment to Federal Agency

Sec. 12. (a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental hospital.

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued hospitalization.



Transportation of Patient

Sec. 13. If the head of the designated hospital advises the court that hospital personnel are available for the purpose, the court may authorize the head of the hospital to transport the patient to the designated mental hospital. Otherwise, the court shall authorize the sheriff to transport the patient to the designated mental hospital.

Duties of Clerk

Sec. 14. (a) The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental hospital.

(b) The clerk of the county court shall prepare two certified transcripts of the proceedings in the commitment hearing, and shall send one to the Department of Mental Health and Mental Retardation and one to the head of the hospital to which the patient is committed. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

Attendants; Means of Transportation

Sec. 15. (a) Every female patient shall be accompanied by a female attendant.

(b) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

Receipt for Patient

Sec. 16. The head of the mental hospital, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

Protective Custody Pending Hearing

Sec. 17. (a) If in the county court in which a petition for commitment is pending, a certificate is filed showing that the proposed patient has been examined within five days of the filing of the certificate and stating the opinion of the examining physician that the proposed patient is addicted to narcotics and because of his addiction is likely to cause injury to himself or others if not immediately restrained, the judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court. Provided, however, the court shall not order the proposed patient into protective custody and transported to a mental hospital until he is advised by the head of the mental hospital that space is available and that the patient will be admitted.

(b) Persons detained in protective custody shall be detained in a mental hospital or other facility deemed suitable by the county health officer.

(c) No person shall be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than seven days.

(d) The county health officer shall see that persons held in protective custody receive proper care and medical attention pending removal to a mental hospital.

[Acts 1969, 61st Leg., p. 1682, ch. 543, eff. Sept. 1, 1969.]

Art. 5561d. Dallas Neuropsychiatric Institute

Establishment, Maintenance and Operation of Institute; Powers and Duties of Board for Texas State Hospitals and Special Schools or Its Successor

Sec. 1. The Board for Texas State Hospitals and Special Schools or its successor in function (hereafter referred to as the Board) is hereby authorized to establish, construct, maintain and operate the Dallas Neuropsychiatric Institute for treatment, teaching and research. The Board, for the establishment, construction, maintenance of these facilities, shall possess all powers, duties, rights and privileges it possesses with respect to other institutions under its control, including the authority to enter into contract and the promulgation of rules and regulations for and the staffing of the institute in conjunction with The University of Texas Southwestern Medical School.

Location; Acquisition of Site

Sec. 2. The new institute shall be located in Dallas on land adjacent to The University of Texas Southwestern Medical School. The Board for Texas State Hospitals and Special Schools shall acquire by gift or purchase, within the limits of legislative appropriations, the site for such facilities, and such Board shall take title to the land in the name of the State of Texas for the use and benefit of said institute; provided, however, that the Attorney General shall first approve the title to the land selected.

Plans and Specifications for Buildings

Sec. 3. The Board shall proceed, within the limits of legislative appropriations of funds, in consultation with representatives of The University of Texas Southwestern Medical School to prepare plans and specifications for (a) necessary building or buildings; and the Board is authorized to make contracts with such persons, corporations, or agencies of state, local and federal governments, and to accept gifts or grants to effect the purposes of this Act within the limits of authorized appropriations, including constructing and equipping all such facilities. The Board of Regents of The University of Texas is hereby authorized to convey a tract of land not to exceed ten acres on the campus

of The University of Texas Southwestern Medical School in Dallas, Texas, the same being in the William B. Coats Survey, Abstract No. 236, Dallas County, Texas, as a construction site for the Dallas Neuropsychiatric Institute in consideration of the same being made available as a full-time teaching facility for The University of Texas Southwestern Medical School in Dallas, Texas, but the deed to said land shall not be executed until a contract is negotiated and executed between the Board of Regents of The University of Texas and the Board for Texas State Hospitals and Special Schools which shall obligate the Board for Texas State Hospitals and Special Schools to operate such institute as a teaching facility fully integrated with the medical program of The University of Texas Southwestern Medical School; said contract may also contain such other terms said<sup>1</sup> conditions as the Boards shall deem reasonable, but nothing herein shall obligate any University of Texas funds for the construction, maintenance or operation of said institute.

Utilization of Staff of University of Texas  
Southwestern Medical School

Sec. 4. It is the legislative intent that the Board, in operating these facilities, shall utilize fully the staff, students and research made available by The University of Texas Southwestern Medical School. In addition, the Board may contract with any public or private agency for research purposes or services as it deems necessary.

[Acts 1965, 59th Leg., p. 981, ch. 475.]

<sup>1</sup> Probably should read "and".

**Art. 5561e. Commitment and Admission of Mentally Ill and Mentally Retarded Persons to Community Centers**

(a) On and after the effective date of this Act, county courts and probate courts may:

(1) Commit mentally ill persons to community mental health centers and to community mental health and mental retardation centers according to the commitment procedures contained in Chapter 243, Acts, 55th Legislature, Regular Session, 1957 (codified as Article 5547, Sections 1-104, Vernon's Texas Civil Statutes).

(2) Commit mentally retarded persons to community mental retardation centers and to community mental health and mental retardation centers according to the commitment procedures contained in Chapter 119, Acts, 54th Legislature, Regular Session, 1955 (codified as Article 3871b, Vernon's Texas Civil Statutes).

(b) The community centers to which persons are committed under this Act must be serving a region in which the committing court is located.

(c) No commitments to community centers under this Act may be made without the consent of the director of the community center first had.

[Acts 1967, 60th Leg., p. 353, ch. 170, § 1, eff. May 12, 1967.]

4 West's Tex. Stats. & Codes—76

**Art. 5561f. Interstate Compact on Mental Health**

Sec. 1. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

"The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical

authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clin-

ical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific

agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutional-

ized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

#### ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

#### ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the gover-

nors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

#### ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Sec. 2. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions and facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

Sec. 3. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

Sec. 4. The compact administrator, subject to the approval of the Comptroller of Public Accounts, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the com-

compact or by any supplementary agreement entered into thereunder.

Sec. 5. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the district court of the district in which the proposed transferee resides.

Sec. 6. Duly authorized copies of this Act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the Administrator of General Services of the United States, and the Council of State Governments.

[Acts 1969, 61st Leg., p. 987, ch. 316, eff. Sept. 1, 1969.]

#### Art. 5561g. Building and Improvement Program

Sec. 1. Upon the effective date of this Act the Texas Department of Mental Health and Mental Retardation and the Texas Youth Council shall have the power, authority, and duty to design, construct, equip, furnish, and maintain buildings and improvements heretofore or hereafter authorized by law at facilities under their respective jurisdictions. These state agencies may employ architects or engineers, or both, to prepare plans and specifications and to supervise such construction and improvements and shall promulgate rules and regulations in conformity with this Act and applicable provisions of other law relating to the award of contracts for the construction of buildings and improvements. Such rules and regulations shall provide for the award of contracts for the construction of buildings and improvements to the qualified bidder making the lowest and best bid. No construction contract shall be awarded for a sum in excess of the amount of funds available for such project and the successful bidder shall be required to give bond payable to the State of Texas equal to the amount of his bid conditioned upon the faithful performance of the contract. The department and council shall have the right to reject any and all bids submitted.

Sec. 2. The state agencies to which this Act applies may waive, suspend, or modify any provision of this Act which might be in conflict with any federal statute or any rule, regulation, or administrative procedure of any federal agency where such waiver, suspension, or modification shall be essential to the receipt of federal funds for any project. In the case of any project wholly financed from federal funds, any standards required by the enabling federal statute or required by the rules and regulations of the administering federal agency shall be controlling.

Sec. 3. From the effective date of this Act until September 1, 1969, the State Building Commission shall provide, under interagency contracts with the department and the council, professional, technical and clerical employee services to the department and the council nec-

essary to enable the department and the council to carry out the functions required of each of them by this Act. Reimbursement to the State Building Commission for costs incurred in rendering these services may be paid by the department out of funds appropriated to it for construction purposes and by the council out of funds appropriated to it for construction purposes. On or before the first working day of the fiscal year beginning September 1, 1969, all files, records, documents, equipment, furnishings, and personal property which was transferred to the State Building Commission by the Texas Department of Mental Health and Mental Retardation pursuant to Subsection (G), Section 5, Chapter 455, Acts of the 59th Legislature, Regular Session, 1965 (Article 678f, Vernon's Texas Civil Statutes), shall be returned to the department. All files, records,

and documents dealing with facilities of the Texas Youth Council shall on or before that date be transferred to the Texas Youth Council. Effective September 1, 1969, the department and the council shall, subject to the provisions of the General Appropriations Act and such other general laws as may apply, employ professional, technical, and clerical personnel to carry out the design and construction functions required by this Act. In selecting such personnel the department and the council shall give first preference to persons employed at that time by the State Building Commission who are assigned and working on projects at facilities of the department and the council respectively.

[Acts 1969, 61st Leg., p. 2696, ch. 881, eff. June 21, 1969.]

**TOPICAL INDEX**  
**TO**  
**REVISED CIVIL STATUTES**  
**See Volume 5**

END OF VOLUME